Supreme Court, U.S.
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No. 99-936

IN THE

Supreme Court of the United States

OCTOBER TERM, 2000

CRYSTAL M. FERGUSON, *et al.*,

Petitioners,

—v.—

THE CITY OF CHARLESTON, SOUTH CAROLINA, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX
VOLUME II OF III, (Pages 624 to 1130)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF EDWARD HORGER

[HORGER 4]

Q. AND BEFORE YOU WENT THERE, WERE YOU ASSOCIATED WITH THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. YES, SIR, I WAS.
Q. HOW LONG WERE YOU THERE?
A. TWENTY-ONE YEARS.
Q. AND WHAT WAS YOUR POSITION THERE?
A. OVER A PERIOD OF 21 YEARS, I ROSE FROM AN ASSISTANT PROFESSOR TO PROFESSOR OF OBSTETRICS AND GYNECOLOGY AND DIRECTOR OF THE DIVISION OF MATERNAL FETAL MEDICINE.
Q. SAW A LOT OF BABIES BORN OVER THOSE 21 YEARS, DIDN'T YOU?
A. YES.
Q. DURING THE COURSE OF YOUR WORK AT THE MEDICAL UNIVERSITY WAS THERE A TIME PERIOD IN WHICH YOU BECAME AWARE OR STARTED NOTICING WITHIN THE POPULATION THAT YOU WERE SERVING AN INCREASE IN THE USE OF COCAINE?
A. YES, I THINK SO.
Q. AND ABOUT WHEN WAS THAT?
A. PROBABLY IN SOMETIME IN 1988. IT MAY HAVE BEGUN IN

THIS PAGE LEFT BLANK INTENTIONALLY

1987. WE WERE NOTICING NATIONWIDE WHAT WAS ULTIMATELY CLAIMED TO BE A CRISES IN TERMS OF COCAINE AND ITS PROBLEMS IN PREGNANCY. AND WE CAME TO REALIZE, GEE, WE HAVE THIS HERE ALSO.

Q. AND SO IS IT FAIR TO SAY THAT WHAT BROUGHT IT TO YOUR ATTENTION INITIALLY WAS HEARING THE INFORMATION THAT OTHER

[HORGER 5]

PLACES WERE HAVING A PROBLEM WITH THIS?

A. I THINK THIS PROBABLY BROUGHT THE REALIZATION TO US THAT WE WERE DEALING WITH THE SAME TYPE OF PROBLEMS THAT WE WERE GOING OFF TO MEETINGS, READING IN JOURNALS, THAT WE HAVE GOT THESE SAME TYPES OF PROBLEMS INCREASING IN OUR HOSPITAL AND PERHAPS WE'RE DEALING WITH THE SAME COCAINE.

Q. SO YOU TOOK THAT INFORMATION BACK TO THE PEOPLE YOU WERE TRYING TO SERVE AND STARTED WATCHING PERHAPS MORE CAREFULLY NOW FOR SOME OF THE SAME SIGNS, IS THAT FAIR?

A. I THINK THIS IS TRUE. I THINK PERHAPS THE VERY FIRST TIME IT CAME TO LIGHT WAS FOLLOWING A CASE OF AN ABRUPTIO PLACENTA WITH A - I TRULY CAN'T RECALL WHETHER IT WAS A DEAD

FETUS AS A RESULT OF THE ABRUPTION, BUT IT WAS A DEFINITE ABRUPTION OF THE PLACENTA. AND I MADE THE COMMENT THAT, GEE, I JUST HEARD SOMEONE AT SUCH AND SUCH A MEETING TALKING ABOUT THIS. AND SOMEONE SAID, WELL, MAYBE WE SHOULD SCREEN FOR COCAINE. WE SCREENED AND IT WAS POSITIVE.

Q. YOU HEARD DOCTOR NEWMAN'S TESTIMONY EARLIER TODAY?

A. YES, I DID.

Q. WAS THAT THE SAME EVENT HE WAS DESCRIBING?

A. NO, I DON'T THINK DR. NEWMAN, HE WAS NOT INVOLVED IN THAT PARTICULAR EVENT, UNLESS MAYBE IT WAS PERIPHERALLY HEARING US TALK ABOUT IT.

Q. BUT IT WAS THE EVENT THAT YOU DESCRIBE, A PARTICULAR TRAUMATIC EVENT FOR YOU AND OTHER PEOPLE WHO WORKED ON THAT

[HORGER 6]

PARTICULAR -

A. I THINK IT WAS A PARTICULAR REVELATION TO ME THAT, GEE, WE HAVE THE SAME PROBLEMS THAT THEY HAVE UP IN NEW YORK AND CALIFORNIA.

Q. WAS THERE ANYTIME DURING THIS EARLY TIME THAT YOU'RE TALKING ABOUT, COMING TO BE AWARE OF A PROBLEM WITHIN THE COMMUNITY THAT YOU SERVED, FOR USING COCAINE, WAS THERE

ANYTIME WHEN YOU DID UNIVERSAL TESTING TO ESTABLISH WHAT - WHAT THE FULL USE MIGHT HAVE BEEN?

A. NO, WE NEVER DID ANY UNIVERSAL TESTING.

Q. AND WHAT IS UNIVERSAL TESTING?

A. I WOULD ASSUME THAT YOU REFER TO TESTING EVERY PATIENT, SUCH AS THE DRUG PREVALENT STUDY, THAT WAS BROUGHT INTO EVIDENCE EARLIER.

Q. AND WOULD IT BE FAIR TO SAY THEN WHAT YOU BASE YOUR INFORMATION ON IN TERMS OF THERE BEING AN INCREASE IN USE OF COCAINE BY THE WOMEN THAT YOU WERE SERVING OR CLINICAL OBSERVATIONS?

A. I THINK THAT WE'RE GOING IN THE SAME DIRECTION. I BELIEVE IT WAS CLINICAL OBSERVATIONS THAT SAID PERHAPS THIS PROBLEM IS CAUSED BY COCAINE. PERHAPS WE SHOULD BE SCREENING FOR DRUG ABUSE. WE DID NOT KNOW THAT WE WERE DEALING WITH COCAINE. WE CAME TO THE REALIZATION AFTER HEARING OTHERS TALKING ABOUT IT, THAT WE DO SEEM TO HAVE HAD MORE ABRUPTIONS OF THE PLACENTA IN THE PAST SIX OR EIGHT OR TEN MONTHS. WE DO

[HORGER 7]

SEEM TO HAVE MORE PRE-TERM LABORS THAT WE ARE UNSUCCESSFUL IN STOPPING WITH OUR USUAL TREATMENT TO STOP PRE-TERM LABOR.

PERHAPS THERE IS A REASON FOR IT, SOMETHING THAT IS DRIVING IT THAT WE HAD NOT BEEN SUSPICION OF PREVIOUSLY.

Q. OKAY. BUT IN FACT AT THAT TIME YOU DID NOT HAVE DATA THAT DOCUMENTED AN INCREASE IN ABRUPTION AND CONNECTED THAT INCREASE WITH THE USE OF COCAINE?

A. I THINK I WOULD AGREE WITH WHAT YOU'RE SAYING, MS. DUNN. I'M NOT REAL SURE WHEN YOU SAY AT THAT TIME. NOW AT WHAT TIME?

Q. I'M TALKING ABOUT THE EARLY TIME.

A. WHEN WE FIRST STARTED LOOKING IN TERMS OF, I DON'T KNOW THIS FOR CERTAIN, BUT I BELIEVE THE FIRST TIME WE EVER DID A URINE DRUG SCREEN WAS PROBABLY IN THE FALL OF 1988. THE FIRST TIME WE EVER DID IT, NO, WE HAD NO INFORMATION IN CHARLESTON THAT SAID WE'RE GOING TO COME UP WITH A LOT OF POSITIVE DRUG SCREENS.

Q. OKAY. SO WAS THIS OCTOBER OF 1988?

A. I BELIEVE THAT IS CORRECT.

Q. OKAY. AND WHEN YOU SAY YOU FIRST STARTED DOING THE URINE DRUG SCREENS IN THE OB/GYN HIGH-RISK CLINIC, HOW DID THOSE SCREENS TAKE PLACE?

A. I THINK THAT THOSE FIRST SCREENS - WHEN I SAY FIRST SCREENS I MAY BE TALKING ABOUT FIVE PATIENTS OR WHATEVER, PROBABLY AROSE JUST LIKE THE ONE THAT I GAVE AN EXAMPLE OF.

[HORGER 8]

HERE IS A PATIENT WITH AN ABRUPTIO PLACENTA, I WONDER IF THIS IS THE SAME CAUSE OF ABRUPTION THAT WE HAVE BEEN HEARING ABOUT AND READING ABOUT. LET'S CHECK THE DRUG SCREEN.

I THINK THE FIRST ONES HAD NO SET POLICY FOR DOING SO. OR POLICY IS A BAD WORD AROUND HERE. NO SET PROTOCOL FOR DOING SO. BUT - BUT THE MEDICAL JUDGMENT WAS THAT HERE IS SOMETHING THAT MAY HAVE RESULTED FROM THE USE OF COCAINE, LET'S SCREEN FOR IT.

Q. SO ARE YOU DESCRIBING A SITUATION THEN WHERE THE INDIVIDUAL'S PHYSICIAN MADE A DECISION BASED UPON THE CLINICAL MANIFESTATIONS?

A. THAT'S CORRECT.

Q. SO THAT THAT WOULD BE A SITUATION WERE THE UDS DRUG SCREEN WAS DONE IN A CIRCUMSTANCE WHERE THE PHYSICIAN, THE PARTICULAR PHYSICIAN OF A PATIENT MADE A DETERMINATION, DEEMED THAT IT WAS NECESSARY FOR THAT PATIENT?

A. THAT'S CORRECT.

Q. AND YOU DESCRIBED THIS TIME PERIOD WHEN THE INITIAL DRUG SCREENS WERE DONE WHEN THE DOCTOR SAW SOME REASON IN CONNECTION WITH A PARTICULAR PATIENT TO DO IT, STARTED IN THE

OB/GYN CLINIC IN OCTOBER OF 1988?
A. I'M NOT CONFIDENT THAT I WOULD SAY WITHIN THE OB/GYN CLINIC. IT STARTED WITHIN THE OB/GYN DEPARTMENT OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA. I SUSPECT STRONGLY THAT THE FIRST ONES THAT WERE DONE WERE HOSPITALIZED PATIENTS,

[HORGER 9]

THESE WERE NOT OUTPATIENTS IN THE CLINIC.
Q. BUT, YOU ARE CERTAIN OF THE TIME FRAME THAT WAS AROUND OCTOBER OF 988?
A. AS LONG AS I CAN SAY AROUND OCTOBER, YES.
Q. AND IN APRIL OF 1989, DID YOU FORMALIZE SOME KIND OF PROTOCOL WITHIN YOUR DEPARTMENT FOR THE SCREENING OF UDS FOR SUSPECTED USE OF COCAINE BY PREGNANT WOMEN?
A. YES. I FEEL LIKE BY THAT TIME WE HAD SEEN THAT MORE AND MORE OF OUR SUSPICIONS OF POSITIVE - OF PATIENTS WHO MAY HAVE BEEN POSITIVE FOR DRUG USE WERE BORNE OUT BY THE DRUG TESTING. BY THE URINE DRUG SCREENS. CONSEQUENTLY I FEARED THAT WE BETTER GET THIS THING ON A REGULAR STRAIGHTFORWARD, NO. QUESTIONS PROTOCOL, LET'S SCREEN THESE PATIENTS WHO HAVE THESE INDICATIONS. I WANTED TO REMOVE ANY SUBJECTIVITY FROM IT. I

HATED THE POSSIBILITY OF SOMEONE SAYING, WELL, SUSAN DUNN, TO USE AN EXAMPLE, LOOKS THIS SHE MIGHT HAVE USED A DRUG, LET'S SCREEN HER. WE WANTED TO AVOID THAT AND PUT IT STRICTLY ON A PROTOCOL BASIS.

Q. AND AT THE TIME IN APRIL OF 1989 WHEN THE PROTOCOL WAS ADOPTED - PROTOCOL IS JUST CONSISTED OF A LIST, THESE ARE THE THINGS THAT YOU SHOULD TEST FOR?

A. CORRECT. SIX INDICATORS.

Q. AND IF I READ THOSE SIX TO YOU WOULD YOU REMEMBER

A. I THINK I CAN REMEMBER THEM WITHOUT.

Q. LET ME LET YOU DO IT THEN.

[HORGER 10]

A. I THINK IT WAS KNOWN SUBSTANCE ABUSE OR KNOWN HISTORY OF SUBSTANCE ABUSE. AND ABSENCE OF PRENATAL CARE. INTRAUTERINE FETAL DEATH. INTRAUTERINE FETAL GROWTH RETARDATION. PRE-TERM. LABOR AND ABRUPTIO PLACENTA.

Q. SO THAT WAS THE FIRST SIX?

A. THAT WAS THE FIRST SIX.

Q. OKAY. AND I'M HANDING YOU A DOCUMENT THAT HAS BEEN PRESENTLY MARKED PLAINTIFF'S EXHIBIT NUMBER 1. DO YOU RECOGNIZE THIS DOCUMENT, DR. HORGER?

A. YES, I DO.

Q. CAN YOU TELL US WHAT IT IS?

A. THIS IS A MEMO SENT TO THE OB/GYN RESIDENTS. AT THAT

TIME IT LOOKS LIKE JUNE OF 1989 ON THIS DOCUMENT. SENT TO THE OB/GYN RESIDENTS AND THE MATERNAL FETAL MEDICINE FACULTY AND FELLOWS WHO WERE INVOLVED IN CARING FOR HIGH-RISK PREGNANCIES.

Q. AND WHAT IS THE DATE OF THIS DOCUMENT?

A. THE DATE OF THIS DOCUMENT IS JUNE THE 30TH.

Q. BUT IT'S YOUR RECOLLECTION THAT THE PROTOCOL WAS ACTUALLY ESTABLISHED IN APRIL?

A. I'M CONFIDENT THAT THE FIRST TIME THAT SUCH - AS A MATTER OF FACT I RECALL SPECIFICALLY THE FIRST TIME THAT IT WAS SENT OUT WAS APRIL. I THINK THAT THE –THAT - THE CHANGE IN THE APRIL DOCUMENT, IN THIS DOCUMENT IS THE ADDITIVE DOWN HERE OF NO OBVIOUS CAUSE ON SEVERAL OF THE INDICATORS.

Q. ALL RIGHT.

[HORGER 11]

A. I BELIEVE THE FIRST DOCUMENT DID NOT HAVE THIS NO OBVIOUS CAUSE. WE TRIED TO REMOVE, FOR INSTANCE, PRE-TERM LABOR. AS WAS POINTED OUT BY THE ATTORNEY EARLIER TODAY AND BY DR. NEWMAN, IT MAY BE VERY WELL KNOWN THAT IF WE HAVE GOT A TRIPLET PREGNANCY OR POLYHYDRAMNIOS, OR SOMETHING OF THIS SORT, WE CAN EXPECT HER TO HAVE PRE-TERM LABOR. WE'RE NOT

TRYING TO CLUTTER UP EVERYTHING BY TESTING EVERYBODY WHO COMES ALONG, IF WE COULD COME UP WITH A REASON WITH THESE WE WOULD REMOVE THAT PATIENT FROM SCREENING.

MS. DUNN: I WOULD LIKE TO MOVE THIS DOCUMENT INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. HOOD: NO.

DEPUTY CLERK: PLAINTIFF'S EXHIBIT NUMBER 1 IN EVIDENCE.

Q. (BY MS. DUNN, CONTINUING) SO, DR. HORGER, IN APRIL OF 1989, A PROTOCOL NOW THAT HAS SIX FACTORS WAS PUT INTO PLACE. WHAT DID YOU USE THAT PROTOCOL TO DETERMINE? WHAT DID THE PROTOCOL DO DURING THAT TIME PERIOD?

A. WHAT DID IT DO?

Q. YES.

A. I THINK WE USED IT TO DETERMINE WHICH PATIENTS IN OUR HOSPITAL OR IN OUR CLINIC WE FELT SHOULD HAVE COCAINE SCREENING.

Q. WAS ANYBODY COLLECTING THE INFORMATION ONCE YOU GOT IT,

[HORGER 12]

PUTTING IT TOGETHER TO FIND OUT HOW MANY PEOPLE ACTUALLY TESTED POSITIVE?

A. YES, I THINK THAT INFORMATION WAS BEING COLLECTED,

Q. WAS THAT BEING COLLECTED BY SHIRLEY BROWN?

A. TO MY RECOLLECTION IT WAS BEING COLLECTED BY SHIRLEY BROWN. AND I FEEL PRETTY CONFIDENT THAT IT COULD BE OBTAINED - THE NUMBER OF POSITIVES AT ANY RATE COULD BE OBTAINED THROUGH THE HOSPITAL LABORATORY.

Q. BUT YOU WEREN'T COLLECTING IT YOURSELF?

A. NO.

Q. SO THAT IF YOU NEEDED TO KNOW HOW MANY POSITIVE DRUG SCREENS FOR COCAINE?

A. I WOULD PROBABLY HAVE REFERRED TO OUR CASE MANAGER AND ASKED FOR THE ANSWER.

Q. AND THE CASE MANAGER THEN WOULD HAVE BEEN SHIRLEY

A. THAT'S CORRECT.

Q. DURING THIS TIME PERIOD OF - FROM APRIL OF 1989 THROUGH THE NEXT SIX MONTHS, WAS THERE ANY PARTICULAR EDUCATION PIECE THAT WAS ALSO BEING PROVIDED FOR THIS -THE POPULATION THAT YOU WERE SERVING OR WERE YOU SIMPLY JUST DOING THE UDS DRUG SCREEN?

A. NO, IT WAS NOT USED AS A - THERE WAS NO EDUCATIONAL PIECE ADDED TO IT OTHER THAN IF WE HAD SOMEONE WHO HAD A COCAINE POSITIVE, HEROIN POSITIVE OR WHATEVER ELSE DURING PREGNANCY, WE WOULD CERTAINLY TRY TO ADVISE THE PATIENT OF THE

RISKS, FROM AN EDUCATIONAL STANDPOINT OF THE RISKS OF CONTINUING TO USE SUCH DRUGS. SIMILAR TO THAT WE WOULD - WITH A PRESCRIPTION MEDICATION THAT WE FELT MIGHT BE CONTRAINDICATED, YOU SHOULDN'T BE ON IT.

Q. AND THERE WAS NO ADDITION TO THE PROTOCOL THAT REQUIRED THE PHYSICIAN OR ANYONE ELSE TREATING THE PATIENT TO REPORT A POSITIVE DRUG SCREEN FOR COCAINE TO THE POLICE, WAS THERE?

A. NO.

Q. WAS THERE PROTOCOL THAT REQUIRED - THAT REQUIRED THAT FOR EACH PATIENT THAT HAD A POSITIVE DRUG SCREEN THAT THAT PATIENT BE REPORTED TO THE DEPARTMENT OF SOCIAL SERVICES?

A. I'M NOT CONFIDENT OF THAT. I THINK THAT PARTICULARLY THOSE WHO HAD DELIVERED WHEN THEY CAME UP WITH A POSITIVE DRUG SCREEN, I SUSPECT THAT DSS WAS PROBABLY ADVISED OF THIS.

Q. BUT WAS DSS ADVISED OF THAT ON A CASE-BY-CASE BASIS?

A. FOR AN INDIVIDUAL PATIENT?

Q. YES.

A. I SUSPECT SO, BUT I'M NOT CONFIDENT OF THAT.

Q. DID THERE COME A TIME AS A RESULT OF HAVING GATHERED THE INFORMATION THAT YOU HAVE FROM THE PROTOCOL THAT WAS PUT IN PLACE IN APRIL OF 1989, THAT YOU AND OTHER PEOPLE WORKING WITH

YOU DECIDED THAT YOU NEEDED TO DO SOMETHING MORE?
A. YES.
Q. WHEN WAS THAT?
A. IN OCTOBER OF 1989.

[HORGER 14]

Q. WHY DID YOU DECIDE YOU NEEDED TO DO SOMETHING MORE?
A. WE FELT AS THOUGH THE NUMBERS OF POSITIVE SCREENS USING OUR LIST OF SIX INDICATORS WAS GETTING TO BE MORE AND MORE COMMON IN OUR POPULATION. WE WERE SEEING MORE AND MORE POSITIVES. WE WERE HAVING, WE FELT LIKE, MORE AND MORE BAD OUTCOMES OF PREGNANCY WHICH COULD BE ATTRIBUTED TO THE USE OF ILLICIT DRUGS.
Q. AND WAS IT AS A RESULT OF THAT THAT YOU MET WITH SOLICITOR CONDON AND REUBEN GREENBERG TO START COMING UP WITH WAYS TO DEAL WITH THIS PROBLEM?
A. I SUSPECT THAT IT WAS, MS. DUNN. I AM NOT TOTALLY CONFIDENT OF HOW THE FIRST MEETING OF THAT GROUP OCCURRED. I WAS NOT INVOLVED. I THINK IT WAS PROBABLY THE SECOND MEETING WHICH WAS THE FIRST I HAD HEARD ABOUT. AND AT THAT TIME THERE WAS SOME STRUCTURE IN PLACE THAT YOU GUYS ARE BREAKING THE LAW, YOU'RE NOT REPORTING THINGS THAT YOU SHOULD BE REPORTING, AND IT CAUSED US GREAT ALARM.

Q. DID ANYONE REPORT TO YOU THAT BETWEEN THE SUMMER OF 1989 AND THE FALL OF 1989, OCTOBER 1989, THAT THERE HAD BEEN ANY CHANGE IN THE STATE LAW?
A. NO, SIR.
Q. DO YOU KNOW HOW YOU CAME TO GO TO THE SECOND MEETING, THE ONE THAT YOU DESCRIBE THAT YOU WENT TO?
A. NO, I DON'T. I - SOMEONE ASKED ME IF I WOULD MEET WITH A GROUP. THERE HAD BEEN NO OBSTETRICIANS INVOLVED IN THE

[HORGER 15]

FIRST MEETING AND BOTH DR. ROGER NEWMAN AND I WE'RE ASKED TO ATTEND THE SECOND MEETING.
Q. DO YOU RECALL WHO ELSE WAS IN ATTENDANCE?
A. AT THE SECOND MEETING?
Q. YES.
A. SOMEONE ELSE WAS CRITICIZED FOR GUESSING. MY THOUGHTS ARE, I DO RECALL THAT CAPTAIN ROBERTS WAS THERE. I RECALL THAT SHIRLEY BROWN WAS THERE. I THINK THAT CHARLES CONDON WAS THERE. THERE WAS MR. FRANK JOHNSON, WHO IS, DR. FRANK JOHNSON WHO IS THE DIRECTOR OF THE CHARLESTON COUNTY SUBSTANCE ABUSE. THERE WAS A NEONATOLOGIST DR. PITTARD WHO WAS THERE. I THINK A SECOND NEONATOLOGIST, DR. ADMIRAL LEFCOFF (PH.) WAS THERE.

BUT I'M REALLY PULLING FROM SEVEN YEARS AGO AND I'M NOT ABSOLUTELY CERTAIN OF WHO ELSE MAY HAVE BEEN.

Q. DO YOU RECALL IN THE MEETING THAT YOU ATTENDED WHETHER THIS MEETING TOOK PLACE BEFORE OR AFTER HURRICANE HUGO?

A. I HAVE NO KNOWLEDGE OF THAT WHATEVER.

Q. OKAY.

A. THE MEETING THAT I ATTENDED?

Q. YES.

A. IT HAD TO HAVE BEEN AFTER IN THAT IT WAS IN IT WAS NOT IN SEPTEMBER.

Q. BUT YOU DON'T HAVE ANY DOUBT THAT ALONG ABOUT OCTOBER OF 1989, AS A RESULT OF THE CONVERSATIONS THAT TOOK PLACE IN SOME MEETINGS, INCLUDING THE MEETING THAT YOU WERE INVOLVED IN, A

[HORGER 16]

WORKING OPERATION, A PROTOCOL WAS PUT INTO PLACE THAT INVOLVED NOT ONLY SCREENING AND TESTING, BUT ALSO REPORTING TO THE POLICE AND SOMETIMES ARREST; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. OKAY. AND AT THAT TIME THE TESTING PROTOCOL ACTUALLY EXPANDED FROM THE SIX SCREENING CRITERIA THAT YOU DESCRIBED WERE ADOPTED IN APRIL OF 1989?

A. NO, I BELIEVE THAT INITIALLY IN THIS OCTOBER 1989 TIME

WHEN WE FIRST INITIATED WHAT HAS COME TO BE KNOWN AS THE POLICY, WE USED THE SAME SIX PARAMETERS THAT WE HAD BEEN WORKING ON FOR SIX MONTHS. IT WAS SEVERAL MONTHS LATER THAT WE ADDED THREE TO IT.

Q. OKAY. AND HOW DID THAT COME ABOUT?

A. I THINK MORE EDUCATION ON OUR OWN PART THAT THERE WERE OTHER INDICATORS THAT MAY - MAY BE - MAY BE JUST AS ATTRIBUTABLE TO DRUG ABUSE, SUCH AS LATE PRENATAL CARE, NONCOMPLIANCE WITH PRENATAL CARE AND FETAL GROWTH - EXCUSE ME, FETAL ANOMALIES.

Q. BUT THE PROTOCOL DID CHANGE IN TERMS OF THE SCREENING CRITERIA, YOU ADDED MORE?

A. YES, ABSOLUTELY.

Q. OKAY. AND APPARENTLY BECAUSE OF THAT, THERE IS NO REAL WAY THAT YOU CAN REALLY COMPARE INFORMATION THAT WAS GAINED FROM OCTOBER OF 1988 ALL THE WAY THROUGH OCTOBER OF 1989 AND BEYOND. YOU CAN'T COMPARE THEM BECAUSE WE'RE TESTING FOR

[HORGER 17]

DIFFERENT THINGS; ISN'T THAT FAIR?

A. I'M NOT SURE THAT WAS A COMPLETE STATEMENT. I FEEL HAVING ADDED MORE INDICATORS, I WOULD EXPECT - CAN WE COMPARE

THEM? WE DON'T HAVE QUITE THE SAME GROUP, BUT WE CERTAINLY WOULD HAVE EXPECTED TO PICK UP MORE POSITIVE SCREENS BY EXPANDING OUR INDICATOR LIST.

Q. RIGHT. SO THAT IF ONE MONTH THE LIST ONLY HAD SIX CRITERIA?

A. RIGHT.

Q. AND YOU GOT, I'M JUST GIVING YOU AN EXAMPLE, YOU GOT TEN POSITIVE DRUG SCREENS FROM USING SIX CRITERIA, IF THE NEXT MONTH YOU USED NINE CRITERIA, AREN'T YOU GOING TO EXPECT TO GET MORE POSITIVE DRUG SCREENS?

A. YES, I WOULD HAVE EXPECTED SO.

Q. AND THAT HAD ALSO HAPPENED IN THE MONTHS IMMEDIATELY PRIOR TO THE ADOPTION OF THE INTERAGENCY POLICY. YOU ADDED MORE CRITERIA?

A. I DON'T THINK THAT'S CORRECT. THE SIX CRITERIA ARE INDICATORS THAT WE USED FROM PROBABLY A FULL YEAR. IF WE SAY THAT THE PROTOCOL, THE POLICY WAS INITIATED IN NOVEMBER OF 1989, THE OTHER THREE CRITERIA WERE ADDED SEVERAL MONTHS LATER AS I RECALL.

Q. BUT, MY QUESTION MAY NOT HAVE BEEN CLEAR, DR. HORGER. BUT IN THE TIME PERIOD IMMEDIATELY BEFORE THE INTERAGENCY POLICY WAS ADOPTED, THAT'S THE ONLY TIME PERIOD WHEN THERE WAS

A PROTOCOL IN PLACE FOR SCREENING FOR COCAINE?
A. FOR SIX MONTHS PRIOR.
Q. SIX MONTHS PRIOR TO THAT?
A. THAT'S CORRECT.
Q. SIX MONTHS PRIOR TO IT YOU FOUND IT?
A. YES.
Q. AND THEN IN OCTOBER OF 1989 YOU DECIDED THAT YOU HAD TO DO SOMETHING MORE; IS THAT FAIR?
A. THAT'S CORRECT.
Q. AND YOU'VE ALSO CLAIMED THAT ONE OF THE REASONS THAT THE POLICY NEEDED TO BE PUT IN PLACE IS BECAUSE PATIENTS WERE BEING REFERRED VOLUNTARILY TO SUBSTANCE ABUSE TREATMENT. WOMEN WHO TESTED POSITIVE FOR COCAINE DURING THEIR PREGNANCIES OR AT THE TIME A CHILD WAS BORN WERE BEING REFERRED, BUT THEY DIDN'T GO?
A. PRIOR TO THE TIME THAT WE USED THE - THAT WE INITIATED THE POLICY USING THE SOLICITOR'S OFFICE AND THE CHARLESTON CITY POLICE, WE NEVER HAD - WE - NEVER IS A TERRIBLE WORD, BUT IT WAS EXTREMELY DIFFICULT TO GET COMPLIANCE FROM ANYONE SAYING YOU HAVE GOT A PROBLEM, WHY DON'T WE GO TO SUBSTANCE ABUSE COUNSELING. NO ONE WOULD GO.
Q. AND YOUR BASIS FOR THAT INFORMATION IS FROM SHIRLEY BROWN?
A. THAT'S CORRECT.

Q. AND AS YOU UNDERSTOOD IT, THE PERSON IN THE MONTHS PRIOR

[HORGER 19]

TO THE ADOPTION OF THE INTERAGENCY POLICY WHO WAS THE PERSON WHO WAS MAKING THE REFERRALS AND ATTEMPTING TO GET THE WOMEN TO GO TO TREATMENT WAS SHIRLEY BROWN?

A. I DON'T THINK IT WAS SOLELY SHIRLEY BROWN. SHIRLEY WORKED IN THE CAPACITY AS A CASE MANAGER FOR THE HOSPITAL, AND I BELIEVE UNDER THE DIRECTION OF MYSELF, WHO WAS CHIEF OF OBSTETRICS AT THE TIME. SO, THESE PROBABLY - PARDON ME. THESE CHANNEL FROM THE DECISIONS MADE BY THE PHYSICIANS TO HAVE SHIRLEY INSTRUCT THIS PATIENT TO GET COUNSELING.

Q. BUT THE QUESTION I ASKED IS THAT AT LEAST PRIMARILY SHIRLEY BROWN WAS THE PERSON WHO WAS TRYING TO GET - TRYING VERY HARD TO GET THESE WOMEN TO GO INTO TREATMENT?

A. I THINK THAT WOULD BE PRIMARILY SHIRLEY BROWN'S DISCUSSION WITH PATIENTS.

Q. AND IT WAS SHIRLEY BROWN WHO WAS TELLING YOU THAT THEY DIDN'T GO?

A. THAT'S CORRECT.

Q. DO YOU KNOW OF ANY FOLLOW-UP PROTOCOL THAT WAS IN PLACE

PRIOR TO THE INITIATION OF THE INTERAGENCY POLICY WITH ANY SUBSTANCE ABUSE PROVIDER TO REPORT BACK TO THE MEDICAL UNIVERSITY AS TO WHETHER ANY OF THESE PATIENTS HAD IN FACT FOLLOWED THROUGH?

A. NO, I DO NOT HAVE SUCH A PROTOCOL IN PLACE. WE DO KNOW THAT OF THOSE THAT WERE REFERRED FOR PRENATAL CARE, WHICH WAS NOT A HUGE, LARGE NUMBER OF PATIENTS, BECAUSE MOST OF THEM

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DELIVERED BEFORE WE EVER FOUND THE FIRST COCAINE POSITIVE OR WHATEVER POSITIVE, OF THOSE REFERRED FOR PRENATAL CARE, WE KNOW WE DID NOT SEE THOSE IN PRENATAL CLINICS. THE NEXT TIME WE SAW THEM WAS WHEN THEY CAME INTO THE HOSPITAL - CAME BACK INTO THE HOSPITAL FOR DELIVERY. SO I KNOW THAT THEY HAD NOT KEPT PRENATAL CARE APPOINTMENTS.

Q. BUT I WASN'T ASKING ABOUT PRENATAL CARE.

A. OKAY.

Q. I WAS ASKING ABOUT SUBSTANCE ABUSE?

A. I BEG YOUR PARDON.

Q. IT'S BEEN REPORTED THAT ONE OF THE REAL BASIS FOR THE NEED OF THIS POLICY IS BECAUSE PEOPLE WOULDN'T GO WHEN THEY WERE ASKED TO GO AND SOMETHING ELSE HAD TO BE DONE?

A. ALL RIGHT.
Q. AND WAS THERE ANY MECHANISM IN PLACE TO EVEN KNOW WHETHER WOMEN WERE NOT GOING?
A. THERE WAS NO WRITTEN MECHANISM TO HAVE SUBSTANCE ABUSE CALLING TO TELL THEM WHETHER OR NOT THE PATIENT HAD SHOWN UP.
Q. DURING THE TIME PERIOD FROM APRIL OF 1989 THROUGH OCTOBER - APRIL OF 1989 THROUGH OCTOBER OF 1989, WAS THERE ANYONE IN YOUR DEPARTMENT WHO WORKED ON SITE IN THE DEPARTMENT WHO HAD ANY SPECIFIC SUBSTANCE ABUSE COUNSELING TRAINING?
A. NOT TO MY KNOWLEDGE.
Q. WERE THERE PEOPLE WHO HAD SUBSTANCE ABUSE COUNSELING TRAINING AVAILABLE TO YOUR DEPARTMENT WITHIN THE MEDICAL

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UNIVERSITY?
A. THERE WERE WITHIN THE DEPARTMENT OF PSYCHIATRY. OR AT LEAST ONE WITH WHOM WE DISCUSSED THIS ON A NUMBER OF OCCASIONS AND ONE WITHIN THE CHARLESTON COUNTY SUBSTANCE ABUSE WITH WHOM I TALKED TO THEM MORE THAN ONE OCCASION.
Q. BUT NONE OF THE CASE MANAGERS WHO WORK?
A. NO.
Q. HAD ANY SUBSTANCE ABUSE TRAINING THAT YOU KNEW OF?
A. NO.

Q. OKAY. AND YOU DON'T CLAIM TO HAVE ANY SPECIALTY IN SUBSTANCE ABUSE?
A. NO, I HAVE NO SPECIALTY IN SUBSTANCE ABUSE.
Q. OKAY. IS THERE ANYONE - WAS THERE ANYONE IN OCTOBER OF 1989, OR THE MONTHS PRIOR TO THAT, AT THE MEDICAL UNIVERSITY IN YOUR DEPARTMENT WHO HAD ANY SPECIFIC SPECIALTY IN THE OVERLAP OF PRENATAL CARE AND SUBSTANCE ABUSE?
A. I DON'T THINK SO.
Q. DR. HORGER, YOU HAD AN OCCASION WITH SHIRLEY BROWN AND CHARLIE CONDON TO REPORT ON THE INTERAGENCY POLICY IN A JOURNAL ARTICLE; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. AND IN THAT REPORT YOU CLAIMED THAT YOU WERE PRESENTING THIS REPORT TO SUPPORT A COMBINED MEDICAL/LEGAL, APPROACH TO THE COCAINE PROBLEM?
A. THAT'S CORRECT.

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Q. IN THAT REPORT YOU REPORT THAT SHIRLEY BROWN ACTUALLY COUNSELED EACH ONE OF THE PATIENTS THAT WERE SEEN BEFORE THE POLICY WHO DIDN'T GO TO SUBSTANCE ABUSE, THAT SHE WAS THE ONE THAT DID THE COUNSELING?
A. ALL RIGHT.
Q. I MEAN, DID YOU?
A. I -

Q. WOULD YOU LIKE TO LOOK AT IT?
A. IF THAT'S WHAT IT SAYS, I WILL ACCEPT THAT. I THINK THAT HER COUNSELING WAS FROM AN EDUCATIONAL STANDPOINT. YOU NEED TO BE FREE OF - FREE OF ILLICIT DRUGS.
Q. IN EVALUATING WHAT WAS KNOWN ABOUT THE COCAINE USE IN THE POPULATION THAT YOU SERVED, PRIOR TO OCTOBER OF 1989, WERE THERE ANY QUESTIONS RAISED ABOUT WHETHER IN FACT THERE WAS SOME OTHER REASONS WHY THE PATIENTS MIGHT NOT BE FOLLOWING UP ON REFERRALS OTHER THAN THEIR OWN WILLINGNESS TO DO IT?
A. NO.
Q. DID - WAS THERE ANY CONSULTATION ABOUT HOW A REFERRAL OUGHT TO BE MADE TO SUBSTANCE ABUSE?
A. OH, I CERTAINLY UNDERSTAND THAT REFERRAL IS MADE TO SUBSTANCE ABUSE BY CALLING SUBSTANCE ABUSE AND MAKING THE APPOINTMENT FOR THEM.
Q. BUT WAS THERE ANY - THERE WASN'T - YOU DIDN'T ASK ANYONE, YOU DIDN'T ASK ANYONE WHAT REALLY NEEDED TO HAPPEN TO HAVE A SUCCESSFUL SUBSTANCE ABUSE REFERRAL, DID YOU?

[HORGER 23]

A. NO, I DIDN'T FEEL THAT WE WERE IN THE POSITION TO TAKE THE COUNSELING ASPECT OF IT. OUR OUTLOOK FOR SOMEONE GOING TO

SUBSTANCE ABUSE WAS FOR THE DETERMINATION OF WHETHER OR NOT THIS PATIENT HAS AN ABUSE PROBLEM, IS A ONETIME RECREATIONAL USER OF WHATEVER DRUG, I FELT THAT THIS WAS UP TO THE ADDICTION ANALYST OR THE SUBSTANCE ABUSE COUNSELORS WHO WERE AVAILABLE.

Q. BUT DIDN'T YOU MAKE THE DETERMINATION IN OCTOBER OF 1989 THAT YOUR DEPARTMENT JUST COULDN'T IGNORE THIS PROBLEM ANYMORE AND THAT YOU HAD TO DO MORE, YOU HAD TO GET INVOLVED IN SUBSTANCE ABUSE?

A. AGREED.

Q. THAT YOU JUST COULDN'T AVOID IT? YOU COULDN'T DO YOUR JOB RIGHT WITHOUT DOING IT?

A. ALL RIGHT.

Q. AT THAT TIME DID - DID YOU CONTACT ANYONE OUTSIDE OF THE CHARLESTON COMMUNITY TO FIND OUT WHAT MIGHT HAVE BEEN SUCCESSFUL IN SIMILAR CIRCUMSTANCES?

A. OUTSIDE OF THE CHARLESTON COMMUNITY?

Q. YES.

A. NO, WE DID NOT.

Q. DID YOU CONSULT ANY NATIONAL GROUPS THAT MIGHT HAVE POLICIES THAT COULD HAVE HELPED YOU IN DETERMINING WHAT WOULD BE USEFUL?

A. IN TERMS OF CONTACTING TO ASK FOR POLICIES, NO. IN TERMS

OF READING WHAT HAD BEEN REPORTED, YES. AND UNFORTUNATELY TO A LARGE EXTENT IT APPEARED INVARIABLY TO BE NOT TOTALLY SUCCESSFUL. PEOPLE WERE TALKING ABOUT THE PROBLEM ALL OVER THE COUNTRY, WE HAVE GOT A PROBLEM, COCAINE IS A CRISIS, WE HAVE GOT TO DO SOMETHING ABOUT IT. WE NEED TO COUNSEL OUR PATIENTS. WE NEED TO EDUCATE OUR PATIENTS. WE NEED TO KNOW. MY FIRM BELIEF WAS NO ONE WAS REALLY DOING ANYTHING ABOUT IT. WE WERE DOING A LOT OF TALKING ABOUT IT WITHOUT GETTING ANYWHERE.

Q. BUT YOU COULDN'T FIND ANYPLACE THAT WAS REPORTING SUCCESS THAT HAD BEEN STUDIED OVER A PERIOD OF TIME?

A. COULD I FIND SUCCESS OVER A PERIOD OF TIME? YES, I THINK WE COULD FIND SOME SUCCESS OVER A PERIOD OF TIME. FOR THE MOST PART WHAT WE WOULD FIND IS THAT SOMEONE HAD THE RESOURCES, THE FINANCE, THE PERSONNEL TO UNDERTAKE PROLONGED COUNSELING, AS WITH ANY OTHER SUBSTANCE ABUSE PROBLEM. AND WE FELT WITHIN OBSTETRICS THAT WE WERE DEALING IN A VERY FINITE PERIOD, THAT COCAINE WAS WRECKING PREGNANCIES AND WE NEEDED TO GET SOMETHING DONE ABOUT IT. WE WERE TRYING HARD TO GET THESE

PEOPLE WHO WERE USING ILLICIT DRUGS AWAY FROM THEIR ILLICIT DRUGS.

Q. AT THE TIME THAT THE INTERAGENCY POLICY WAS ADOPTED, YOU DID NOT CONTACT DR. HULSEY AND ASK HIM TO HELP DESIGN ANY KIND OF RESEARCH PROTOCOL TO FIND OUT IF COCAINE WAS CAUSING ANY OF THE PROBLEMS THAT HAD BEEN PERCEIVED ON A CLINICAL BASIS, DID

[HORGER 25]

YOU?

A. NO, WE DID NOT.

Q. PRIOR TO THE INITIATION OF THE INTERAGENCY POLICY, THERE WAS NO DATA COLLECTED ASSOCIATED WITH NEWBORNS EXPOSED TO PRENATAL COCAINE, WAS THERE?

A. NO DATA COLLECTED?

Q. YES.

A. AS A MATTER OF FACT, IT IS MY BELIEF THAT SOME OF OUR EARLIEST MEETINGS OCCURRED AS A RESULT OF THE NEONATOLOGIST NOTING AN INCREASE IN PROBLEM WITH THE NEWBORNS. IN TERMS OF DATA COLLECTING FROM A LONG-TERM FOLLOW UP, NO, THERE WASN'T. IN TERMS OF THE NEONATOLOGIST TELLING US WE'RE GIVING THEM MORE AND MORE BABIES THAT ARE EXTREMELY PREMATURE, MANY OF WHOM SHOW THE SOMEWHAT VAGUE WITHDRAWAL-TYPE SYMPTOMATOLOGY THAT ONE MIGHT EXPECT FROM COCAINE, THIS WAS VERY REAL TO THE

NEONATOLOGIST TO DR. PITTARD AND DR. LEFCOFF.
Q. BUT -
A. BUT THERE WAS NO LONG-TERM FOLLOW-UP OF THESE INCIDENTS.
Q. AND THERE WASN'T ANY PARTICULAR DATA? THERE WERE CLINICAL REPORTS, BUT THERE WASN'T HARD DATA?
A. THAT'S CORRECT.
Q. IN THE TIME PERIOD IMMEDIATELY PRIOR TO THE ADOPTION OF THE INTERAGENCY POLICY, I BELIEVE THAT YOU HAVE ALREADY ALLUDED TO THE FACT THAT MOST OF WOMEN WHO WERE IDENTIFIED AS TESTING POSITIVE FOR COCAINE TESTED AT THE TIME OF DELIVERY?

[HORGER 26]

A. THAT'S CORRECT.
Q. AND SOMETIMES THE TEST RESULTS MIGHT NOT HAVE EVEN BEEN BACK BEFORE THEY WERE DISCHARGED FROM THE HOSPITAL; ISN'T THAT POSSIBLE?
A. I WOULD NOT DENY THAT SOMETIMES IT MAY HAVE BEEN POSSIBLE, BUT I THINK THE LIKELIHOOD WOULD HAVE BEEN VERY LOW. I THINK THAT THE DRUG SCREEN WOULD HAVE BEEN REPORTED IN THE GREAT, GREAT MAJORITY OF PATIENTS BEFORE DISCHARGE FROM THE HOSPITAL, POSITIVE OR NEGATIVE.
Q. DR. HORGER, AT THE TIME POINT AT WHICH THE PHYSICIAN

FOUND OUT THAT A PATIENT TESTED POSITIVE FOR COCAINE WAS AFTER A CHILD WAS BORN, WHAT IMPACT CAN THAT POSSIBLY HAVE ON THE PRENATAL CARE THAT'S GOING TO LEAD UP TO THE BIRTH OF A CHILD?

A. ON THE PRENATAL CARE IT WOULD HAVE NO IMPACT ON THAT PREGNANCY. ON SUBSEQUENT PREGNANCIES I THINK IT MAY WELL HAVE HAD AN IMPACT ON IT. I WOULD LIKE TO THINK IT HAD AN IMPACT ON IT, ALTHOUGH UNFORTUNATELY WE RECOGNIZE THAT SOME PATIENTS HAVE TESTED POSITIVE IN SUCCESSIVE PREGNANCIES. FROM THE STANDPOINT - MAY I EXPLAIN FROM A STANDPOINT OF THE NEONATE, I THINK IT MAY HAVE CONSIDERABLE VALUE.

Q. DID THE INTERAGENCY POLICY IN OCTOBER OF 1989 ESTABLISH ANY FOLLOW-UP FOR THE NEONATES?

A. DID THE INTERAGENCY POLICY ESTABLISH A FOLLOW-UP? NO, IT DID NOT BECAUSE THE PATIENT WAS ALSO, THE CASE WAS ALSO

[HORGER 27]

REFERRED TO THE DEPARTMENT OF SOCIAL SERVICES, WHO DID THEN THE FOLLOW-UP.

Q. BUT WAS THERE AT THIS SPECIAL PROGRAM PUT IN PLACE AT THE MEDICAL UNIVERSITY TO FOLLOW UP ON INFANTS WHO MIGHT HAVE BEEN

EXPOSED TO COCAINE DURING THEIR MOTHER'S PREGNANCY?
A. IF THERE WERE, MS. DUNN, IT WAS DONE BY THE NEONATOLOGISTS AND NOT BY OBSTETRICIANS. I DO NOT KNOW THE ANSWER.
Q. AND THE INITIAL CRITERIA THAT WERE ESTABLISHED AS PART OF THE INTERAGENCY POLICY WERE CRITERIA ONLY FOR TESTING MOTHERS; THAT'S CORRECT, ISN'T IT?
A. THE INITIAL CRITERIA WERE FOR MOTHERS ONLY.
Q. DR. HORGER, AFTER THE INTERAGENCY POLICY WAS PUT IN PLACE, WERE THERE ANY REGULAR MEETINGS SET IN PLACE AT THE MEDICAL UNIVERSITY TO EVALUATE HOW THIS POLICY WAS DOING?
A. YES. WE HAD REGULAR MEETINGS FOR AT LEAST THE FIRST SOME MONTHS AFTER THE POLICY WAS SET IN PLACE, AS I RECALL, ON A MONTHLY BASIS IN TERMS OF HOW WAS THIS GOING. THIS WAS A MORE OF A LOGISTIC CHECK THAN ANYTHING INITIALLY. IT ULTIMATELY LED TO SOME CHANGE IN THE POLICY SUCH AS ADDING THE OTHER THREE INDICATORS. IT ULTIMATELY LED TO SOME CHANGE IN THE, WHAT I HAVE HEARD REFERRED TO TODAY AS THE AMNESTY CHANGE IN THE POLICY TO AVOID ARRESTS IMMEDIATELY AFTER CHILDBIRTH. THIS WAS - THESE THINGS RESULTED FROM OUR REGULAR MEETINGS TO DISCUSS THE POLICY.

[HORGER 28]

Q. AND AMNESTY IS A TERM THAT WAS NEVER USED IN ANY OF THE INITIAL MEETINGS CONCERNING THE POLICY, WAS IT?
A. NOT TO MY KNOWLEDGE.
Q. AND THAT WAS SOME NEW SPIN ON THE POLICY AND HOW THEY WERE GOING TO TALK ABOUT IT?
A. I WOULD LIKE TO POINT OUT THAT I LEFT THE MEDICAL UNIVERSITY HOSPITAL SOME MONTHS AFTER THE PROGRAM WAS BEGUN AND I - I SUSPECTED AFTER HEARING HEARD WHAT I DID TODAY THAT IT CAME TO BE KNOWN AS AN AMNESTY THING.
Q. YOU WERE AWARE THAT IN THE EARLY MONTHS OF THE POLICY WOMEN WERE ARRESTED STRAIGHT FROM THE MEDICAL UNIVERSITY?
A. YES.
Q. UPON HAVING TESTED ONE TIME?
A. YES, I WAS AWARE OF THAT.
Q. THOSE WOMEN WEREN'T GIVEN ANY OPPORTUNITIES FOR EDUCATION, WERE THEY?
A. IF THEY HAD - IF THEY HAD PRENATAL CARE, YES, THEY WERE GIVEN AN OPPORTUNITY FOR EDUCATIONAL TESTING. IF THEY WATCHED TELEVISION, THEY WERE GIVEN AN OPPORTUNITY FOR EDUCATIONAL. THIS - WHEN THIS GOT STARTED, IT - IT, AS I RECALL, IT WAS ALL OVER THE MEDIA. IN ADDITION, EVERY PATIENT WHO CAME TO

OUR PRENATAL CLINICS WAS SHOWN THE MOVIE, WAS SHOWN THE LETTER ABOUT HARM TO THE BABY, TO THE FETUS. THIS WAS AN EFFORT IN EDUCATION RIGHT UP FRONT, LET'S HIT THEM WITH HARD NEWS, THIS IS WHAT COCAINE OR WHATEVER DRUG MAY BE CAUSING.

[HORGER 29]

Q. SO YOU WANTED THIS TO HAVE A LOT OF ATTENTION? YOU WANTED TO BRING ATTENTION -

A. WE WANTED TO TRY TO STOP THE USE OF COCAINE AMONG THE OBSTETRIC POPULATION. AND I WISH TO GOODNESS WE COULD STOP IT AMONG EVERYBODY.

Q. YOU KNEW YOUR PATIENTS WERE HAVING THEIR NAMES IN THE PAPER FROM HAVING BEEN ARRESTED RIGHT FROM YOUR HOSPITAL?

A. I DO RECALL THAT SOME NAMES WERE IN THE PAPER.

Q. WERE YOU AT ALL CONCERNED AS A PHYSICIAN IN TERMS OF THE EFFECT ON THESE PATIENTS' MEDICAL CARE TO BE TAKEN IMMEDIATELY FROM THE HOSPITAL TO THE JAIL?

A. I DON'T THINK THAT A PATIENT WOULD HAVE BEEN DISCHARGED FROM THE HOSPITAL HAD SHE NOT BEEN ABLE TO BE DISCHARGED FROM THE HOSPITAL. WAS I CONCERNED ABOUT THEM BEING TAKEN IMMEDIATELY TO JAIL? WITH SOME OF THE THINGS THAT I HAVE

HEARD THAT WERE PAINTED FROM THE STAND HERE EARLIER, THEY DID SOUND UNFORTUNATE. I WISHED THEY HAD NOT BEEN DONE, IF THEY WERE INDEED DONE.

Q. DID ANYBODY IN THE PROCESS -

MR. HOOD: HE IS IN THE MIDDLE OF ANSWERING THE QUESTION.

THE COURT: LET HIM ANSWER THE QUESTION.

A. I SAID, IF THEY WERE INDEED HANDLED THAT WAY. NO PATIENT WAS DISCHARGED FROM THE HOSPITAL PRIOR TO A MEDICAL - I LOST MY WORD, ACCEPTABILITY FOR DISCHARGE. SHE WAS READY FOR

[HORGER 30]

DISCHARGE. KEEP IN MIND THAT PATIENTS CAN BE DISCHARGED FROM THE HOSPITAL EASILY WITHIN 48 HOURS, AT LEAST SO WHAT THE GOVERNMENT SAYS NOW. AND PERHAPS EVEN 24 HOURS IN MANY CASES. EVERY PATIENT WAS READY FOR HOSPITAL DISCHARGE.

Q. BUT DID ANYBODY IN THE FORMULATING - IN THE INITIAL MEETINGS FORMULATING THE POLICY, EVER GO AND LOOK AT WHAT WAS AVAILABLE AT THE JAIL AND WHAT THESE WOMEN WERE SENT TO?

A. TO MY KNOWLEDGE NONE OF THE PHYSICIANS WENT TO STUDY THE JAIL. WE WERE TOLD THAT, YES, WE CAN TAKE CARE OF IT, WE HAVE

THE CAPABILITY, WE HAVE THE FACILITY. WE DID NOT EXPECT THERE TO BE A GREAT NEED FOR CONTINUED NURSING CARE. JUST AS WHEN MY WIFE GOES HOME AFTER DELIVERY THERE -- THERE ISN'T A NEED FOR CONTINUED NURSING CARE.

Q. BUT YOUR WIFE DIDN'T GO TO A JAIL?

A. NO. FORTUNATELY SHE DID NOT USE COCAINE.

Q. DR. HORGER, IN YOUR WORK, YOU HAVE OCCASION, DON'T YOU, TO DEAL WITH PATIENTS IN GENERAL WHO DON'T FOLLOW YOUR ADVICE AS A PHYSICIAN; IS THAT FAIR?

A. THAT IS UNFORTUNATELY TRUE.

Q. I'M SURE THAT YOU TELL MANY A PATIENT, STOP SMOKING AND SHE DOESN'T STOP. YOU TELL HER TO STOP DRINKING AND SHE DOESN'T STOP DRINKING.

A. THIS IS TRUE.

Q. IT'S SOMETIMES YOU TELL, JUST STOP RIGHT NOW, GO COLD TURKEY, DON'T USE IT ANYMORE, IS THAT FAIR?

[HORGER 31]

A. YES.

Q. BUT HAVEN'T YOU FOUND PATIENTS THAT HAVE FOUND THAT REALLY VERY, VERY DIFFICULT TO DO, TO STOP AN ADDICTIVE BEHAVIOR JUST BECAUSE YOU TOLD THEM TO?

A. I BELIEVE THAT YOU'RE CORRECT.

Q. AND YOU HAVE OFTEN, WITH WORKING WITH THOSE PATIENTS, YOU

HAVE TO WORK OUT A WAY TO GET THEM TO CUT DOWN, AT LEAST IF THEY COULDN'T STOP COMPLETELY?

A. TRUE.

Q. AND THEN PART OF YOUR RELATIONSHIP WITH THEM FROM DOCTOR TO PATIENT, YOU'RE DOING THE BEST YOU CAN WITH THE PATIENT YOU HAVE GOT TO WORK WITH; IS THAT FAIR?

A. THIS IS TRUE.

Q. AND THE BEST YOU CAN IN YOUR EXPERIENCE ACTUALLY DOES HAVE AN EFFECT ON THE FETAL - ON THE OUTCOME ON THE PREGNANCY?

A. HOPEFULLY WE ARE DOING SOME GOOD TOWARD GETTING PEOPLE AWAY FROM CIGARETTES AND ALCOHOL AND OTHER BAD THINGS TO USE DURING PREGNANCY. I THINK THAT MOST OF WHAT YOU'RE REFERRING TO THOUGH, PARTICULARLY THE CIGARETTES AND ALCOHOL APPEAR TO BE DOSE RELATED TO A MUCH GREATER EXTENT THAN THE THINGS THAT WE HAVE TALKED ABOUT SO MUCH HERE TODAY, AND FOR THE LAST TWO WEEKS, COCAINE. I AM UNAWARE OF ANY EVIDENCE THAT A SINGLE DRINK OR A SINGLE CIGARETTE CAUSES ANY HARM TO ANY RESEARCH ANIMAL OR HUMAN BEING. A SINGLE COCAINE DOSE DOES.

[HORGER 32]

Q. DR. HORGER, THAT'S NOT THE QUESTION THAT I ASKED YOU. I

WAS ASKING YOU SPECIFICALLY IN TERMS OF WHAT YOU DO TO GET A PATIENT TO -

A. WE DO OUR BEST TO GET THEM TO GET AWAY FROM CIGARETTES.

Q. AND IF YOU HAVE A SITUATION WHERE YOU HAVE PATIENTS WHO NEED SOME KIND OF MEDICAL CARE, SAY YOU HAVE GOT A PATIENT WHO YOU BELIEVE SHOULD HAVE A C-SECTION, YOU HAVE A PATIENT WHO WON'T HAVE IT, REFUSES TO CONSENT TO YOU DOING A C-SECTION, YOU CAN - YOU CAN GO TO COURT AND GET THE COURT TO SAY THAT THAT PATIENT MUST DO WHAT YOU SAY, EVEN IF THE PATIENT REFUSES; ISN'T THAT TRUE?

A. I SUPPOSE YOU CAN DO SO. WOULD I DO SO? PROBABLY NOT.

Q. WOULD YOU THEN JUST LIVE WITH THE CLIENT'S DECISION?

A. DEPENDS ON WHAT THE DECISION - WHAT HER DECISION IS BASED ON AND WHAT MY THOUGHT IS AS TO WHY SHE SHOULD HAVE A CESARIAN.

Q. IF YOU HAD A PATIENT WHO YOU WERE PRESENTING IN PRENATAL CARE WHO WAS SERIOUSLY SUICIDAL, YOU KNEW THAT THE AVAILABILITY OF COMMITMENT WAS THERE FOR YOU TO HELP PROTECT HER FROM HARMING HERSELF, DON'T YOU? THAT WAS AVAILABLE?

A. DO I KNOW THAT THAT IS AVAILABLE?

Q. YES.

A. YES, I'M AWARE THAT IS AVAILABLE.

Q. AND YOU KNEW THAT WAS AVAILABLE IN THE FALL OF 1989?
A. YES.

[HORGER 33]

Q. DR. HORGER, EVEN THOUGH YOU HAVE STATED TODAY ON THE STAND THAT YOU BELIEVE THAT A SINGLE DOSE OF COCAINE CAN HAVE BAD EFFECTS ON PREGNANCY.
A. ALL RIGHT.
Q. THERE IS NO SCIENTIFIC STUDY THAT VALIDATES THAT, IS THERE?
A. THERE ARE QUITE A FEW PAPERS IN THE WELL RESPECTED MEDICAL LITERATURE THAT SAY THAT AFTER A SINGLE DOSE OF COCAINE THIS PATIENT HAD AN ABRUPTIO PLACENTA. IN ONE OF DR. CHASNOFF'S PAPERS PUBLISHED IN '86 HE SAYS AFTER A SINGLE DOSE OF COCAINE THIS PATIENT HAD A FETUS WITH PERINATAL CEREBRAL INFARCTION. THERE ARE A NUMBER OF PAPERS THAT SAY THIS WAS A SINGLE DOSE ISSUE IN THIS PARTICULAR TRAGEDY.
Q. THOSE WERE - THOSE WERE REPORTS WITHIN ARTICLES, THEY WERE NOT STUDIES THAT ESTABLISH, ON A DEFINITIVE BASIS, THAT THAT WAS REALLY THE CAUSE OF THE PROBLEM?
A. N0. THAT WAS NOT A RESEARCH STUDY THAT REPORTED, HERE, SMOKE THIS ROCK AND LET'S SEE WHAT HAPPENS, NO.

Q. IN FACT, IT'S SOMETHING THAT WOULD BE VERY, VERY DIFFICULT TO HAVE GOOD CLINICAL DATA ON, ISN'T IT?
A. I DON'T THINK ANYONE IS GOING TO EVER DO SUCH A RESEARCH PROJECT.
Q. AND TO BE ABLE TO VALIDATE THAT A SINGLE DOSE CAUSED THE PROBLEM, YOU'RE GOING TO HAVE TO BE ABLE TO TRUST THE CLIENT HAS REPORTED TO YOU ACCURATELY?

[HORGER 34]

A. OH, ABSOLUTELY. WE HAVE TO TRUST WHAT SHE SAYS, SHE USED A SINGLE USE OF CRACK ONE TIME IN THE ENTIRE - THE ENTIRE LIFE. DO WE ACCEPT THAT? UNFORTUNATELY AS WE LEARN MORE AND MORE ABOUT WHAT GOES ON WITH THE USE OF CRACK, I THINK IT LESS LIKELY TO REALLY BELIEVE IT. BUT IT'S ALL YOU HAVE GOT TO GO ON. IT'S WHAT ALL OF THESE AUTHORS HAD TO GO ON WHEN THEY REPORTED THIS AS BEING A SINGLE USE. FROM AN EXPERIMENTAL ANIMAL STANDPOINT, A PAPER BY WOOD, IN THE JAMA BACK IN, I'M GUESSING ABOUT 1987, DEALING WITH EXPERIMENTAL ANIMALS, SHOWED THAT A SINGLE INTRAVENOUS INOCULATION INJECTION IN EXPERIMENTAL ANIMALS CAUSED SUCH AND SUCH A PROBLEM. A PAPER BY TOM MOORE IN ROUGHLY 1989 IN THE

AMERICAN JOURNAL OF OB/GYN, EXPERIMENTAL ANIMALS SHOWED THAT A SINGLE USE OF COCAINE COULD CAUSE HORRENDOUS PROBLEMS GENERALLY IN TERMS OF THE BASAL CONSTRICTION ASPECT THAT DR. NEWMAN TALKED ABOUT.

Q. BUT AGAIN -

A. BUT IN HUMANS, NO ONE CAN DO SUCH AN EXPERIMENT.

Q. AND THE DATA HAS NOT BEEN COLLECTED TO VALIDATE THAT?

A. THAT'S CORRECT.

Q. DURING THE TIME PERIOD THAT YOU WORKED AT THE MEDICAL UNIVERSITY, DID YOU HAVE OCCASION TO TREAT PATIENTS WHO TESTED POSITIVE FOR THINGS OTHER THAN COCAINE?

A. DID WE HAVE OCCASION TO TREAT PATIENTS?

Q. YES.

[HORGER 35]

A. I WOULDN'T SAY THAT WE WERE TREATING - PROBABLY UNFORTUNATELY WE WERE NOT TREATING THE PATIENT WHO WAS POSITIVE FOR SUCH AND SUCH FOR THE SUBSTANCE ABUSE ITSELF. IN TERMS OF TREATING THE OBSTETRIC ASPECT OF THE PATIENT WHO HAD A POSITIVE FOR MARIJUANA OR FOR OPIATES, YES.

Q. YOU TREATED THOSE WHEN YOU WORKED AT THE MEDICAL UNIVERSITY?

A. WE SAW THOSE PATIENTS AND MANAGED THEIR PREGNANCIES JUST AS WE WOULD MANAGE ANY OTHER PREGNANCY.
Q. AND WHAT WERE EXAMPLES OF OTHER KIND OF DRUGS THAT YOU SAW IN THE POPULATION?
A. WE HAVE SEEN POSITIVE CANNABINOIDS, WHICH RELATES TO MARIJUANA. WE HAVE SEEN POSITIVE OPIATES, WHICH RELATES TO HEROIN. WE HAVE SEEN POSITIVE BARBITURATE SCREENS, WHICH RELATES TO, I DON'T KNOW WHAT THEY - I DON'T KNOW WHAT WOULD HAVE BEEN TAKEN, SECONAL, FOR INSTANCE. I THINK I HAVE SEEN POSITIVE AMPHETAMINES COME BACK ON SCREENS.
Q. DR. HORGER, YOU'RE AT RICHLAND MEMORIAL HOSPITAL IN COLUMBIA RIGHT NOW?
A. THAT'S CORRECT.
Q. HOW LONG HAVE YOU BEEN THERE?
A. SIX AND A HALF YEARS.
Q. THERE IS NO POLICY IN PLACE THAT USES THE THREAT OF ARREST OR ARREST FOR WOMEN WHO TEST POSITIVE FOR COCAINE AT THAT HOSPITAL, IS THERE?

[HORGER 36]

A. NO, THERE ISN'T.
Q. DR. HORGER, WHEN YOU WROTE YOUR ARTICLE WITH SHIRLEY BROWN AND CHARLES CONDON, THAT ARTICLE PURPORTED TO REPORT THE

SUCCESS OF THIS POLICY; IS THAT CORRECT?
A. I THINK IT - WHAT I TRIED TO SHOW THERE WAS THAT BY UNDERTAKING A MORE AGGRESSIVE APPROACH WE ULTIMATELY LED TO FEWER POSITIVE DRUG SCREENS. IS THAT SUCCESS? THERE WAS NO PROTOCOL SET UP A YEAR EARLIER TO SAY AFTER SUCH AND SUCH A PERIOD OF TIME WE'RE GOING TO FIND OUT WHAT SUCCESS PARAMETERS WE CAN MEASURE. WE DID SHOW FEWER POSITIVE DRUG SCREENS AND FELT THAT - FELT THAT OUR POLICY, IN ADDITION TO - TO THE GREATER MEDIA ATTENTION TO THE DANGERS OF COCAINE, THAT IS A BETTER EDUCATIONAL APPROACH. AND IN ADDITION PERHAPS RELATED ALSO TO BETTER POLICE WORK TRYING TO CUT DOWN ON THE COCAINE AVAILABILITY IN OUR AREA, WE FELT THAT WE WERE GETTING SOMEWHERE.
Q. AS PART OF YOUR RESPONSIBILITY, AS THE HEAD OF THE DEPARTMENT, THE OB/GYN DEPARTMENT, WHEN YOU WERE THERE, DID YOU ACTUALLY OBSERVE SHIRLEY BROWN IN ANY OF THESE COUNSELING SESSIONS WITH WOMEN WHO TEST POSITIVE FOR COCAINE?
A. YES. LET ME - LET ME MAKE ONE CORRECTION. I WAS NOT THE HEAD OF THE DEPARTMENT OF OBSTETRICS AND GYNECOLOGY IN CHARLESTON, I WAS HEAD OF THE DIVISION WITHIN CHARLESTON.

Q. I'M SORRY.
A. YES, I DID OBSERVE SHIRLEY BROWN COUNSELING A PATIENT WHO

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[HORGER 38]

Q. YOU DIDN'T KNOW THAT THAT WAS THE KIND OF THING THAT SOME PEOPLE GET A LOT OF TRAINING IN IN ORDER TO MAKE IT WORK BECAUSE THEY WANT IT TO BE SUCCESSFUL?
A. I WAS AWARE THAT PEOPLE GET AN AWFUL LOT OF TRAINING IN SUBSTANCE ABUSE COUNSELING. IN TERMS OF THE WAY OUR CHARLESTON COUNTY SUBSTANCE ABUSE CLINIC WAS SET UP, TO MAKE AN APPOINTMENT WITH THEM WAS OUR - I FELT LIKE OUR ROLE, THAT THEY THEN WOULD UNDERTAKE THE COUNSELING SESSION.
Q. DO YOU THINK THAT WAS ALL YOU NEEDED TO DO WAS JUST MAKE AN APPOINTMENT?
A. PERHAPS I SHOULD APOLOGIZE, BUT TO MY KNOWLEDGE SIX AND A HALF YEARS LATER, THAT'S WHAT WE WERE DOING.
Q. AND IT'S YOUR BELIEF THAT AFTER THE POLICY WENT IN PLACE THAT THE NUMBERS WERE GOING DOWN IN TERMS OF POSITIVE DRUG SCREENS?
A. THAT'S CORRECT.
Q. WHEN I SAY POSITIVE DRUG SCREENS, IT'S DRUG SCREENS SPECIFICALLY FOR COCAINE, CORRECT?

A. THOSE WERE THE ONES THAT YOU REPORTED IN THE PAPER TO WHICH YOU REFER.
Q. AND WHO WAS THE PERSON WHO COLLECTED THE DATA?
A. SHIRLEY BROWN KEPT THAT DATA FOR ME.
Q. AND THAT DATA WASN'T IN THE PINS, IT WASN'T IN DR. HULSEY'S DATABASE, IT WAS ONLY SHIRLEY BROWN THAT COLLECTED THAT DATA?

[HORGER 39]

A. I TRULY DON'T KNOW WHETHER IT WAS IN DR. HULSEY'S DATABASE.
Q. AND YOU KNEW THAT SHIRLEY BROWN WAS THE PERSON AT THE MEDICAL UNIVERSITY WHO DEALT PRIMARILY WITH THE CITY POLICE WHEN THE POLICE WERE CALLED TO ARREST A PATIENT? YOU KNEW THAT?
A. YES.
Q. DID YOU IN ANY WAY SUPERVISE HOW IT WAS THAT SHE PROVIDED THAT INFORMATION?
A. TO THE CITY POLICE?
Q. YES.
A. NO.
Q. WAS THERE ANY PROTOCOL ESTABLISHED FOR HER IN TERMS OF HOW SHE WAS SUPPOSED TO DO THAT?
A. IN TERMS OF HOW?
Q. YES.
A. NOT TO MY KNOWLEDGE. IN TERMS OF SHOULD SHE DO SO, YES.

IN THE FIRST SIX MONTHS IN WHICH I WAS IN, I GUESS THE OVERSEER OR IN CHARGE OF THE POLICY, MEDICAL ASPECT, SHIRLEY WAS MY DESIGNEE TO TAKE CARE OF NOTIFYING CITY POLICE WHEN WE HAD SUCH A - AN OUTLIER FROM THE PROPER POLICY.

Q. SO SHE WAS DOING THAT BECAUSE YOU ASKED HER TO AND YOU CHOSE TO DELEGATE THAT AUTHORITY TO HER?

A. DID I DELEGATE IT? I'M NOT SURE I DELEGATED IT. IT WAS PART OF HER JOB AS THE CASE MANAGER TO ASSURE THAT WE ALL HAD

[HORGER 40]

COMPLIANCE WITH THE POLICIES AND PHILOSOPHIES OF THE MEDICAL UNIVERSITY HOSPITAL, THIS WAS PART OF HER CASE MANAGEMENT JOB.

Q. BUT AS A NURSE CASE MANAGER, YOU DON'T GET ANY PARTICULAR TRAINING IN HOW TO REPORT SOMEBODY TO THE POLICE, DO YOU?

A. I HOPE THAT NOT EVERYONE NEEDS TO KNOW.

Q. WERE YOU AWARE THAT SHIRLEY BROWN COLLECTED INFORMATION IN HER OFFICE IN ORDER TO PROVIDE THAT INFORMATION TO THE POLICE AND SOLICITOR'S OFFICE?

A. NO.

Q. DID YOU EVER LOOK IN HER OFFICE TO SEE WHAT KIND OF INFORMATION SHE WAS COLLECTING?

A. NO.

Q. WERE YOU AWARE THAT PEOPLE FROM - PEOPLE FROM THE SOLICITOR'S OFFICE CAME TO HER OFFICE AND SAT THERE AND REVIEWED INFORMATION AT THE MEDICAL UNIVERSITY?
A. I WAS UNAWARE OF IT UNTIL I HEARD IT IN THIS COURTROOM.
Q. WAS THERE ANYONE WHO WAS OVERSEEING HOW SHIRLEY BROWN UNDERTOOK THE DUTIES THAT WERE GIVEN TO HER UNDER THIS POLICY?
A. I THINK WE WERE - YES, I THINK DR. ROGER NEWMAN AND I BOTH WERE OVERSEEING THE FACT THAT SHIRLEY BROWN WAS DOING THE JOB WHICH SHE HAD BEEN ASSIGNED.
Q. AND YOU KNEW THAT SHE WAS HANDING OUT LETTERS FROM THE SOLICITOR TO YOUR PATIENT?
A. WHEN THE PATIENT HAD A POSITIVE DRUG SCREEN THAT WAS PART

[HORGER 41]

OF THE POLICY.
Q. IT BECAME PART OF THE POLICY THAT SHE HANDED OUT LETTERS FROM THE SOLICITOR?
A. YES.
Q. OKAY. IN YOUR COMPLETE HISTORY AS A DOCTOR, HAVE YOU EVER HAD A NURSE HANDING OUT LETTERS FROM LAW ENFORCEMENT TO YOUR PATIENTS IN ANY SITUATION OTHER THAN THIS?
A. NO.

Q. AND SHIRLEY BROWN DIDN'T COME TO YOU AND ASK YOU TO REVIEW HER DATA SHEET IN WHICH SHE COLLECTED INFORMATION SPECIFICALLY ABOUT WOMEN WHO TESTED POSITIVE FOR COCAINE UNDER THE POLICY, DID SHE?

A. IN OUR MONTHLY MEETINGS OR HOWEVER OFTEN WE WERE HAVING SUCH MEETINGS EARLY ON, WE DISCUSSED HOW MANY PATIENTS HAD BEEN POSITIVE, WHAT WAS THE SITUATION WITH THIS PATIENT, WAS THIS A REPEAT POSITIVE, WAS IT SOMEONE WHO DID NOT GET ANY SUBSEQUENT PRENATAL CARE OR SUBSTANCE ABUSE CARE OR WHATEVER. WE KEPT IT. WE DID HAVE THAT INFORMATION ON A RUNNING MONTHLY BASIS AND THIS DATA CAME FROM SHIRLEY BROWN WHO WAS THE RECORD KEEPER.

Q. SHE WAS THE RECORD KEEPER OF THE INFORMATION ABOUT WOMEN WHO TESTED POSITIVE FOR COCAINE?

A. THAT'S CORRECT.

Q. AND DID SHIRLEY BROWN ALSO UNDERTAKE, WITH YOUR KNOWLEDGE, TO OVERSEE WHETHER IN FACT THE RESIDENTS WHO WERE

[HORGER 42]

THE ONES WHO WERE ORDERING THE UDS SCREENS WERE DOING WHAT THEY WERE SUPPOSED TO DO?

A. ABSOLUTELY. THIS WAS PART OF HER - I FELT THAT IT WAS

PART OF HER JOB. THIS WAS A MEDICAL UNIVERSITY HOSPITAL POLICY, AND IF SOMEONE THROUGH OVERSIGHT, IGNORANCE OR STUBBORNNESS FAILED TO FOLLOW OUT A - FOLLOW THROUGH WITH THE POLICY TO DO THE APPROPRIATE TEST ORDERING, THEN I THINK IT WAS UP TO OUR CASE MANAGER FOR HIGH RISK OBSTETRICS, SHE WOULD BE THE FIRST PERSON TO NOTE THIS.

Q. SO -

A. SIMILAR TO ORDERING A TEST FOR SEIZURES ON AN OB PATIENT, IF SOMEONE DOESN'T CHECK IT OUT AND FINDS IT HAS NOT BEEN DONE, HOW DO WE TRAIN A RESIDENT THIS HAS TO BE DONE.

Q. AND HOW YOU CHOSE TO DO THAT WAS TO ASK SHIRLEY BROWN TO TAKE THAT ON?

A. I'M NOT AWARE THAT SHE WAS ASKED TO CHECK EVERY PATIENT'S RECORD AND FIND OUT IF THERE WAS AN INDICATOR FOR DRUG SCREEN AND HAD THE DRUG SCREEN BEEN DONE. I FEEL CONFIDENT THAT AS A CASE MANAGER FOR HIGH-RISK OBSTETRICS SHE WAS AWARE OF PRACTICALLY EVERY PRE-TERM LABOR PATIENT IN THE HOSPITAL, ALMOST CERTAINLY EVERY PATIENT WITH AN INTRAUTERINE FETAL DEATH AND ALMOST CERTAINLY EVERY PATIENT WITH ABRUPTIO PLACENTA. I THEN FEEL CONFIDENT THAT SHE ALSO WOULD HAVE SEEN TO IT THAT SOMEONE BY OVERSIGHT DID NOT GET A DRUG SCREEN,

THAT IT WAS DONE.

[HORGER 43]

Q. AND SHIRLEY TOOK A REAL INTEREST IN THIS AREA, SHE WAS VERY INTERESTED IN SAYING THAT THE MOTHERS WHO TESTED POSITIVE FOR COCAINE GOT - GOT SOME KIND OF REFERRAL, THAT SHE GOT SOME HELP, SHE WAS INTERESTED IN IT?

A. I FEEL SHE TOOK A REAL INTEREST IN EVERY JOB THAT SHE UNDERTOOK.

Q. BUT ONE OF THE THINGS SHE TOOK A PARTICULAR INTEREST IN WAS THIS COCAINE POLICY?

A. IT WAS PART OF HER JOB.

Q. AND SHE TOOK PARTICULAR INTEREST IN IT IN THE TIME PERIOD IMMEDIATELY BEFORE THE ADOPTING OF THE POLICY AS WELL, DID SHE NOT?

A. YES.

Q. AND THE ONLY ONE THAT COLLECTED ANY DATA ON COCAINE IN THE TIME PERIOD IMMEDIATELY PRIOR TO THE POLICY?

A. I DON'T KNOW THAT FOR A FACT.

Q. IN THE ARTICLE THAT YOU WROTE ABOUT THIS INTERAGENCY POLICY, YOU COMPARED COCAINE USE WITH THE GENERAL POPULATION ON THE BASE OF A NUMBER OF FACTORS, DID YOU NOT?

A. I COMPARED - WHAT WE COMPARED WAS PREGNANCY OUTCOME PARAMETERS IN PATIENTS WOULD HAD USED COCAINE VERSUS A GROUP

OF PATIENTS WHO HAD NO HISTORY OF COCAINE. WHAT WE RETROSPECTIVELY PULLED FROM DR. HULSEY'S DATABANK AS BEING THE GENERAL POPULATION OF THE OBSTETRIC PATIENTS AT THAT TIME.

Q. BUT, IN THAT - IN THAT COMPARISON OF THE PREGNANCY

[HORGER 44]

OUTCOME, YOU DIDN'T EVEN BOTHER TO REPORT THE NUMBER OF ABRUPTO PLACENTAS?

A. THE NUMBER OF ABRUPTO PLACENTAS?

Q. RIGHT. WASN'T THAT ONE OF THE PARAMETERS - IT WASN'T EVEN ONE OF THE PARAMETERS THAT WAS INCLUDED IN THAT ANALYSIS?

A. ALL RIGHT.

Q. YOU DON'T DISPUTE THAT?

A. NO.

Q. STILL YOU SAY IT WAS ABRUPTIONS THAT JUSTIFIED PUTTING IN THIS POLICY?

A. I DIDN'T SAY ABRUPTIONS JUSTIFIED PUTTING IN THIS POLICY. I SAID AN INCREASING NUMBER OF OUTCOME PARAMETERS THAT SUGGESTED COCAINE USE INDICATED PUTTING IN OR LED US TO PUT IN THIS POLICY. ABRUPTION MAY BE ONE OF THEM. THE INCIDENCE OF ABRUPTION IS EXTREMELY LOW IN THE GENERAL POPULATION. IT IS SO LOW THAT TO COME UP, I BELIEVE ANOTHER

ATTORNEY HERE USED SOME A QUESTION WITH DR. NEWMAN EARLIER, YOU'VE GOT TO HAVE A NUMBERS TO MAKE ANYTHING SIGNIFICANT. IF WE LOOK AT THE RATE OF ABRUPTIO PLACENTAS IN THE THREE THOUSAND PATIENTS THAT WE SEE OVER A PERIOD OF A YEAR, IT WOULD BE, OH, 20, 22 SOMETHING,OF THAT SORT. IF WE SEE IN THE - I THINK 119 PATIENTS IN THAT PARTICULAR REPORT THAT YOU HAVE THERE, AS I RECALL THERE WERE TWO OR THREE ABRUPTIO PLACENTAS. THOSE FIGURES ARE TOO SMALL TO MAKE ANY REAL STATISTICAL SIGNIFICANCE FROM THEM.

[HORGER 45]

Q. AND THEY'RE TOO SMALL -

MR. HOOD: I THINK THE COURT PLEASE, HE WAS IN THE MIDDLE.

THE COURT: I THOUGHT HE FINISHED.

THE WITNESS: I'M COMPLETE.

Q. (BY MS. DUNN, CONTINUING) AND ACTUALLY THE POPULATION THAT YOU HAD TO OBSERVE IN THE TIME PERIOD, YOU KNOW HAD TOO SMALL A NUMBER OF PLACENTAL ABRUPTIONS FOR YOU TO MAKE ANY DETERMINATION, ANY CONNECTION WITH COCAINE USE FOR YOUR PARTICULAR POPULATION?

A. THIS MAY BE TRUE, MS. DUNN. I REALLY DON'T RECALL HOW

MANY ABRUPTO PLACENTAS WERE PRESENT AT ANY GIVEN TIME THERE.
Q. AND, DR. HORGER, IT'S FAIR TO SAY THAT THE EVALUATION OF THE EFFECT OF COCAINE ON A PREGNANCY IS VERY HARD TO DO IN ANY PARTICULAR PREGNANCY? THAT'S FAIR, ISN'T IT?
A. THAT'S FAIR.
Q. IT'S ALSO FAIR TO SAY THAT MOST WOMEN WHO ABUSE COCAINE DURING THEIR PREGNANCY ALSO HAVE OTHER PROBLEMS THAT AFFECT THEIR PREGNANCY?
A. THAT IS A FAIR STATEMENT.
Q. SOME OF THEM HAVE POVERTY?
A. THAT'S TRUE.
Q. SOME OF THEM HAVE MALNUTRITION?
A. THAT'S TRUE.
Q. SOME OF THEM HAVE HOMELESSNESS?

[HORGER 46]

A. I DON'T KNOW THAT, BUT I WILL ACCEPT THAT.
Q. SOME OF THEM MAY BE IN AN ABUSIVE RELATIONSHIP?
A. THAT'S RIGHT.
Q. SOME OF THEM HAVE - MAY HAVE OTHER DRUG USE PROBLEMS?
A. YES.
Q. SOME OF MAY HAVE ALCOHOL PROBLEMS?
A. INTERESTINGLY THE DATA I HAVE SAYS THAT THE ALCOHOL USE IS NOT STATISTICALLY SIGNIFICANT IN COCAINE ABUSERS VERSUS

PATIENTS WHO ARE NOT USING COCAINE, BUT ALL OF THE OTHER FACTORS SAY YES.

Q. BUT I WAS ASKING IN RELATIONSHIP TO THE CARE OF A PARTICULAR PATIENT, IF THAT PARTICULAR PATIENT HAD PROBLEMS WITH ALCOHOL?

A. BUT LET ME GO BACK. ALTHOUGH I WILL ACCEPT THAT TRYING TO DETERMINE THAT COCAINE IS THE PARTICULAR POINT - PROBLEM THAT CAUSED THE DIFFICULTY, IN A PATIENT WHO IS RELUCTANT TO GET PRENATAL CARE OR FAILS TO GET PRENATAL CARE, IS PERHAPS MALNOURISHED, IS PERHAPS ANEMIC, PERHAPS HAS A SEXUALLY TRANSMITTED DISEASE, PERHAPS IS ANEMIC, YES, ALL OF THESE THINGS CAN AFFECT THE PREGNANCY. THAT'S WHY IT'S PARTICULARLY VALUABLE TO LOOK AT A STUDY SUCH AS REPORTED BY DOCTORS ORAL AND DICKSON FROM SAN DIEGO. IN 1987 THEY DID A MULTIVARIATE ANALYSIS OF ALL THE DATA. IT SHOWED THAT COCAINE ITSELF WAS THE FACTOR THAT WAS CAUSING THE PROBLEM WITH THE PREGNANCY, INDEPENDENT OF

[HORGER 47]

NUTRITIONAL STATUS, ANEMIA, SOCIOECONOMIC STATUS, ALCOHOL OR ANY OF A NUMBER OF OTHER THINGS. GOOD INFORMATION.

Q. GOOD INFORMATION, BUT IN THE CARE OF ANY PARTICULAR PRENATAL PATIENT IN ORDER TO FIGURE OUT WHAT THEY MAY REALLY NEED FOR THAT PATIENT'S PREGNANCY OUTCOME, YOU HAVE TO LOOK AT WHAT THAT PATIENT ACTUALLY HAS? THERE IS NOT A ONE-SHOE-FITS-ALL TREATMENT?

A. ALL RIGHT.

Q. FOR PRENATAL CARE; IS THAT FAIR?

A. I THINK YOU'RE PROBABLY CORRECT.

Q. DR. HORGER, I JUST WANT TO BE CLEAR. YOU HAD NO DOUBT IN OCTOBER OF 1989 THAT THERE HAD BEEN NO RECENT CHANGE IN THE CHILD ABUSE REPORTING STATUTE?

A. VERY HONESTLY, MS. DUNN, I WAS NOT AWARE OF EVER HAVING READ THE SOUTH CAROLINA CHILD ABUSE STATUTES OR LAWS UNTIL IT WAS SHOWN TO ME AT A MEETING IN EARLY OCTOBER 1989 WHEN IT WAS STATED VERY CLEARLY THAT ANY HEALTH CARE PROVIDER WHO HAS ANY REASON TO SUSPECT NOT - NOT FULL KNOWLEDGE, BUT TO SUSPECT ABUSE OF A CHILD MUST REPORT THIS TO EITHER THE LAW OR DSS.

Q. BUT, DR. HORGER -

A. I WAS UNAWARE OF IT.

Q. BUT, DR. HORGER, IT WAS YOUR UNDERSTANDING IN OCTOBER OF 1989 THAT THE CRIMES WERE BEING REPORTED WERE DRUG CRIMES? POSSESSION, DISTRIBUTION; ISN'T THAT TRUE?

A. YES.

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[HORGER 56]

RESULT OF VARIOUS - I DON'T KNOW WHETHER TO CALL IT INSIGHTS, CLINICAL OBSERVATIONS OR JUST WHAT, THE DECISION WAS REACHED, IN CONJUNCTION WITH OTHERS THAT HAVE BEEN BROUGHT OUT SEVERAL TIMES HERE, THAT WE NEEDED TO GET STARTED TRYING TO DO SOMETHING. I WON'T FOR A MOMENT DEMEAN THE IDEA THAT EDUCATION AND REHABILITATION IS THE RIGHT WAY TO GO IN SUBSTANCE ABUSE INDIVIDUALS. OUR PROBLEM THAT WE FELT WAS THE FINITE PERIOD OF TIME WITH WHICH WE HAD TO DEAL WITH TRYING TO DO SOMETHING MORE FOR THE FETUSES. AND PERHAPS FOR THE CHILDREN THE NEONATES ALSO.

Q. WHEN SUBSTANCE ABUSE WAS VOLUNTARY, WAS IT WORKING?

A. WE FELT THAT IT WAS NOT WORKING AT ALL.

Q. NOW, I DIDN'T BRING YOUR CAREER UP TO TODAY. DOES DR. NEWMAN NOW HAVE THE JOB YOU HAD IN THE '89 AND '90 TIME PERIOD?

A. DR, NEWMAN HAS THE JOB THAT I WAS FORMERLY IN. I RESIGNED MY POSITION AS DIRECTOR OF A DIVISION I THINK IN MARCH OF 1990. THE - AND I DEPARTED THE MEDICAL UNIVERSITY IN JUNE OF - AT THE END OF JUNE 1990. MY REASON FOR

RESIGNING THE DIRECTORSHIP EARLY WAS BECAUSE OF SOME WORRY AS TO WHAT WOULD HAPPEN WITH OUR FELLOWSHIP PROGRAM WHICH HAD TO HAVE APPROVAL AND SO FORTH. I WANTED TO HAVE SOMEONE NEW IN THE DIRECTORSHIP BEFORE I WAS GONE AND SAID NOW I'M LEAVING IT WITH SOMEONE ELSE.

AND THEN I LEFT CHARLESTON IN JUNE OF 1990 AND MOVED

[HORGER 57]

TO COLUMBIA AND ASSUMED A POSITION AS PROFESSOR OF OBSTETRICS AND GYNECOLOGY AT THE UNIVERSITY OF SOUTH CAROLINA IN CONTRADISTINCTION TO THE MEDICAL UNIVERSITY, AND AM NOW CHAIRMAN OF THAT DEPARTMENT.

Q. IT'S A MEDICAL SCHOOL?

A. YES, SIR.

Q. IT'S THE COMPETING MEDICAL SCHOOL WITH OURS HERE IN CHARLESTON?

A. NO, WE THINK THIS ONE IS THE COMPETING MEDICAL SCHOOL TO THE ONE IN COLUMBIA.

Q. AND YOU'RE CHAIRMAN OF THE DEPARTMENT THERE?

A. THAT'S CORRECT.

Q. ALL RIGHT. NOW BACK TO THE POLICY. SO, THE POLICY IS THEN FORMULATED. AND HOW WAS IT IMPLEMENTED, DR. HORGER?

A. HOW WAS IT IMPLEMENTED? I'M NOT SURE WHERE I WANT TO GO WITH HOW WAS IT IMPLEMENTED.

IN THE BEGINNING THE POLICY, AS WE HAVE TALKED ABOUT ON A NUMBER OF OCCASIONS, WE, I GUESS - I CAME INTO THIS AFTER SOME STRUCTURE HAD ALREADY BEEN PLACED: WE HAVE GOT A PROBLEM. THAT WE ARE NOT COMPLYING WITH WHAT WE WERE TOLD WAS THE LAW, THAT WE WERE POSSIBLY BREAKING AT THE TIME. WE DID REALLY SEE THIS WAS - PERHAPS THIS ALSO MAY HELP US TO DO SOMETHING ABOUT STOPPING COCAINE ABUSE BY THE PREGNANT POPULATION.

IT WAS THEN IMPLEMENTED BY VARIOUS STEPS IN WHICH WE

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[HORGER 59]

NOW, WE THEN CONTINUED WITH THE PROTOCOL LISTING THAT MS. DUNN ASKED ME ABOUT YESTERDAY. THE SIX PARAMETERS OR INDICATORS THAT WE FELT SHOULD BE USED. WE FELT STRONGLY THAT WE OUGHT TO USE THOSE INDICATORS IN ORDER TO ENCOMPASS ALL OBSTETRICS PATIENTS. I DID HAVE SOME WORRY THAT IF WE DID NOT HAVE THIS ORGANIZED IN SUCH A MANNER, SOMEONE MIGHT SAY I KNOW THIS - I KNOW MY PATIENT DOESN'T USE DRUGS, I'M GOING TO SKIP HER. WE FELT THAT ANYONE WHO HAD ANY INDICATOR THAT WAS ON THE LIST SHOULD BE SCREENED. CONSEQUENTLY WE FELT STRONGLY

THAT WE COULD INCLUDE BOTH PRIVATE PATIENTS AND WHAT WE - WHAT WE WOULD ENTITLE WARD SERVICE PATIENTS, AND WE COULD INCLUDE ASIANS, AFRO AMERICANS, CAUCASIANS OR ANYONE ELSE WITHOUT ANY ACCUSATION OF SELECTION.

Q. WAS THERE ANY?

A. TO MY KNOWLEDGE THERE HAS NEVER BEEN.

Q. AND WAS THE CRITERIA, IN YOUR OPINION, ADEQUATE? THAT IS THE LISTING OF THE FIRST FIVE OR SIX, AND THEN NINE CRITERIA TO DETERMINE THAT IS THE PERSON TO TEST?

A. AT THE TIME WE HAD DONE SO, YES, I FELT THAT IT WAS. I THOUGHT THAT WE HAD EVERYTHING COVERED. I THINK THAT THERE HAS BEEN SOME EVIDENCE, REPORTS AND WHATNOT IN THE PAST SIX OR EIGHT YEARS THAT MAY HAVE ADDED ONE OR TWO INDICATORS THAT HAD WE KNOWN ABOUT EARLY ON WE MAY HAVE PUT INTO THE LIST.

Q. YOU WERE ASKED TO READ A LETTER YESTERDAY. I DON'T KNOW IF IT WAS PUT IN EVIDENCE, BUT IT'S A LETTER TO MR. CONDON,

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[HORGER 61]

MR. HOOD: LET HER MARK IT FIRST.

MS. DUNN: I DON'T THINK IT MATTERS WHICH ONE IT IS.

DEPUTY CLERK: PLAINTIFFS' EXHIBIT 44 IN EVIDENCE.
MR. HOOD: IT'S HIGHLIGHTED IF YOU WANT TO SUBSTITUTE AN UNHIGHLIGHTED ONE YOU CAN.
A. I WILL POINT OUT THIS WAS WRITTEN AFTER I HAD LEFT THE MEDICAL UNIVERSITY AND THE CHARLESTON AREA.
Q. YES, SIR.
A. THE HIGHLIGHTED PORTION OF THIS LETTER STATES THAT: HOWEVER, I UNDERSTAND THAT THERE HAS NOT BEEN ANY NEED FOR FURTHER ARREST IN THAT EACH PATIENT HAS GONE AHEAD WITH SUBSTANCE ABUSE COUNSELING.
Q. THANK YOU, DR. HORGER. AS THE POLICY WAS IMPLEMENTED AND FOLLOWED?
THE COURT: SHOW THAT TO MS. DUNN SO SHE WILL SEE WHAT YOU HAVE HIGHLIGHTED. AND IF SHE WANTS TO, YOU CAN GET A CLEAN COPY AND SUBSTITUTE. GO AHEAD WITH THE EXAMINATION.
MR. HOOD: SHE SAYS IT'S OKAY.
Q. (BY MR. HOOD, CONTINUING)WHILE YOU WERE THERE AND THE POLICY WAS BEING FOLLOWED, WHAT WAS YOUR OPINION AS TO THE SUCCESSFULNESS OF THE POLICY?
A. MY OPINION WAS -
MS. DUNN: OBJECTION, YOUR HONOR, UNLESS HE IS GOING TO LAY SOME BASIS FOR WHAT THIS OPINION IS COMING FROM. THIS

COULD BE VERY MISLEADING INFORMATION.

[HORGER 62]

THE COURT: I OVERRULE THE OBJECTION. I THINK HE HAS ALREADY MADE THE FOUNDATION AS TO HIS INVOLVEMENT WITH THE POLICY, FIRSTLY.

SECONDLY, I THINK YOU ASKED HIM THE VERY SAME QUESTION ON YOUR EXAMINATION. AND ASKED HIM A NUMBER OF FOLLOW-UP QUESTIONS IN THE MATTER. SO I'M GOING TO PERMIT HIM TO ANSWER THE QUESTION.

GO AHEAD.

A. MY OPINION WAS THAT WE WERE ENCOUNTERING FEWER OF THE COMPLICATIONS THAT WE HAD PREVIOUSLY BEEN ATTRIBUTING TO DRUG USE AND WERE - WERE HAVING REPORTS OF FEWER POSITIVE DRUG SCREENS IN THE SIX OR SEVEN MONTHS THAT I WAS HERE AFTER THE DRUG - AFTER THE DRUG POLICY WENT INTO EFFECT.

Q. NOW, WHAT WAS THE ROLE OF THE CHARLESTON COUNTY. SUBSTANCE ABUSE COMING UNDER THIS POLICY?

A. THEY WERE NOT INTIMATELY INVOLVED WITH ORGANIZING THE POLICY. THEY SAT IN ON THE FIRST FEW DISCUSSIONS OF THE POLICY. HOW MUCH FOLLOW-UP THEY GAVE US IN TERMS OF MEETING WITH US ON A MONTHLY BASIS, I REALLY DON'T RECALL. THEY WERE

- THE LEADERSHIP OF THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION CLINIC WAS INVOLVED THROUGH MR. FRANK JOHNSON IN STATING THAT, YES, THEY COULD HANDLE WHAT WE REFERRED TO THEM. THAT'S ABOUT AS FAR AS THAT WENT. TO MY RECOLLECTION.
NOW THEY ALSO AGREED TO KEEP US APPRISED OF THOSE INDIVIDUALS WHO FAILED TO KEEP THEIR SUBSTANCE ABUSE CLINIC

[HORGER 63]

APPOINTMENTS.
Q. AND THE COUNSELING OF THESE PATIENTS WAS DONE BY CHARLESTON COUNTY SUBSTANCE ABUSE?
A. YES.
Q. AND THE DECISION TO REFER A PATIENT TO CHARLESTON COUNTY SUBSTANCE ABUSE, WAS THAT A MEDICAL DECISION?
A. IT WAS A MEDICAL DECISION. IT WAS BASED ALMOST ENTIRELY - WELL, I GUESS IT WAS BASED ENTIRELY ON SOME ACTION AGAINST THE POLICY. THAT IS A POSITIVE URINE DRUG SCREEN.
Q. ALL RIGHT. AND THE - ONE OF THE CASE MANAGERS THAT WORKED ON THIS POLICY, WHOSE NAME HAS BEEN MENTIONED MANY TIMES BY THE PLAINTIFFS, HER NAME IS SHIRLEY BROWN. DID SHE WORK DIRECTLY UNDER YOUR SUPERVISION?

A. I THINK SHE WORKED UNDER MY SUPERVISION. SHE WORKED FOR THE HOSPITAL. PERHAPS I WORKED FOR THE HOSPITAL ALSO IN THAT IT'S CONTROLLED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA. I WAS HER SUPERVISOR IN THIS REGARD. I WAS ALSO HER SUPERVISOR IN REGARD TO HIGH-RISK OBSTETRICS PATIENTS FOR WHICH SHE WAS THE CASE MANAGER.

Q. THAT'S DIFFERENT THAN THIS COCAINE POLICY?

A. THE HIGH-RISK MANAGEMENT? YES. YES. THAT INCLUDED A GREAT MANY PATIENTS WHO WERE NOT PART OF THE COCAINE POLICY.

Q. SO SHE HAD DUTIES BEYOND JUST THIS POLICY?

A. OH, YES.

Q. WOULD YOU DESCRIBE HER ROLE UNDER THE POLICY?

[HORGER 64]

HER ROLE UNDER THE POLICY WAS TO KEEP US APPRISED OF WHAT WAS GOING ON. I GUESS IF WE DESCRIBE A JOB DESCRIPTION FOR A CASE MANAGER, THAT I - I FEEL LIKE THAT'S SOMEONE WHO HAS THE RESPONSIBILITY FOR KEEPING THINGS IN ORDER REGARDING A PARTICULAR SUBSET OF - OF PROBLEMS. HER SUBSET WOULD HAVE BEEN HIGH-RISK OBSTETRICS.

SHE THEN WAS RESPONSIBLE FOR COORDINATING NURSING

POLICIES WITH MEDICAL - MEDICAL MANAGEMENT IN ORDER TO COME OUT WITH THE RIGHT DECISIONS OF WHAT SHOULD BE DONE AND WHEN.

I THINK THAT A THIRD PART WOULD PROBABLY BE TO ASSURE THAT WE WERE ALL COMPLYING WITH WHATEVER POLICIES, NOT THIS POLICY WITH A CAPITAL P, BUT WITH WHATEVER POLICIES AND PHILOSOPHIES WERE PRESENT AT THE MEDICAL UNIVERSITY HOSPITAL.

NOW IN REGARD TO THIS PARTICULAR SITUATION, I GUESS THE FEW JOB DESCRIPTIONS THAT I WOULD SAY MS. BROWN HAD, WAS TO - WE REPORTED THE POSITIVE URINE DRUG SCREENS TO HER. SHE WAS THE ONE WHO THEN WAS TO ARRANGE FOR MAKING SURE THAT WE GOT PROPER APPOINTMENTS TO PRENATAL CARE AND PROPER APPOINTMENTS TO SUBSTANCE ABUSE. WHEN THOSE APPOINTMENTS WERE NOT KEPT, THEY WERE SUPPOSED TO HAVE BEEN REPORTED TO HER. IN ACTUALITY, THE PRENATAL CARE APPOINTMENTS REALLY WERE KNOWN BY THOSE OF US WHO WORKED IN THE PRENATAL CARE HIGH-RISK CLINICS.

Q. DID YOU OBSERVE HER INTERACTION WITH PATIENTS?

A. ON A NUMBER OF OCCASIONS I OBSERVED HER INTERACTIONS. I WAS NOT THERE BY ANY MEANS EVERY TIME SHE MET WITH EVERY

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[HORGER 67]

Q. HAVEN'T THERE BEEN REPORTS TO THE MEDICAL LITERATURE WHAT ONE DOSE OR ONE USE OF COCAINE COULD DO TO THE BABY?

A. BACK IN THE EARLY MIDDLE OR LATE EIGHTIES WHEN WE WERE FIRST READING MORE AND MORE, AND LEARNING MORE AND MORE ABOUT THE PROBLEM, THERE WERE ANY NUMBER OF REPORTS THAT SAID THIS PATIENT HAD SUCH AND SUCH A CATASTROPHE, IMMEDIATELY FOLLOWING OR SHORTLY FOLLOWING HER ONLY USE OF COCAINE.

Q. YOU TALKED ABOUT COCAINE WRECKING PREGNANCIES. AFTER THE POLICY, DID THIS WRECKING SUBSIDE?

A. I THINK IT DECREASED CONSIDERABLY. THERE IS NO QUESTION BUT THAT WE STILL SEE PROBLEMS FROM COCAINE USE.

MR. HOOD: THANK YOU, DOCTOR.

<u>REDIRECT EXAMINATION</u>

BY MS. DUNN:

Q. DR. HORGER, WHEN YOU REPORTED TO THIS JURY AND TO THE COURT THAT BEFORE THE INTERAGENCY POLICY WAS ADOPTED IT WASN'T WORKING AT ALL, THAT INFORMATION WAS TOTALLY BASED UPON INFORMATION PROVIDED TO YOU BY SHIRLEY BROWN?

THE COURT: I'M NOT GOING TO PERMIT THAT. YOU WENT INTO THAT ON YOUR EXAMINATION. IT'S NOT NEW MATTER AND IT'S NOT THE SUBJECT OF RECROSS.

Q. (BY MS. DUNK, CONTINUING) IN ANSWERS TO THE QUESTIONS THAT MR. HOOD PUT TO YOU, YOU LISTED SEVERAL ORGANIZATIONS THAT YOU BELONGED TO AS PART OF YOUR PROFESSIONAL WORK; IS THAT CORRECT?

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[HORGER 80]

(12-18-96 CONTINUED TESTIMONY OF DR. HORGER.)

THE COURT: DOCTOR HORGER, I REMIND YOU THAT YOU'RE STILL UNDER OATH.

MR. WHERRY: YOUR HONOR, PERHAPS I WAS WRONG, BUT I THOUGHT THAT THE COURT RULING WAS WHEN WE CALLED AN ADVERSE WITNESS, THAT THEY WERE TO DO THEIR DIRECT AND THAT THERE WAS SOMEWHAT OF A LIMITATION ABOUT CALLING THEM BACK. I DON'T KNOW THE PURPOSE. I DON'T KNOW THE PURPOSE THE WITNESS IS BEING CALLED FOR, BUT I THINK HE HAS ALREADY BEEN DONE ON BOTH CROSS AND DIRECT.

THE COURT: WHAT I SAID WAS THIS. I SAID THAT IN VIEW OF FACT THAT YOU CALLED A PARTY TO THE ACTION REPRESENTED BY MR. HOOD, THAT I WAS NOT GOING TO LET HIM DELAY HIS

EXAMINATION OF DR. HORGER UNTIL HIS CASE BECAUSE IT JUST WOULD BE REPETITION.

MR. WHERRY: YES.

THE COURT: I WAS GOING TO REQUIRE HIM TO GO FORWARD. WITH THE EXAMINATION. BUT IF THE FACT THAT YOU CALLED DR. HORGER, RATHER THAN HIM BEING PRESENTED AS A WITNESS BY THE DEFENSE IN THE NORMAL ORDER OF PROOF, DISRUPTED THE DEFENDANTS' CASE, I WOULD LET HIM ASK SOME ADDITIONAL

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[HORGER 82]

BY MR. HOOD:

Q. DR. HORGER, DID YOU EVER HEAR ANYONE SAY THERE WAS AN EPIDEMIC OF COCAINE AMONG BLACK WOMEN OR THE BLACK COMMUNITY? THE USE OF COCAINE?

A. DID I EVER HEAR ANYONE SAY?

Q. THAT THERE WAS AN EPIDEMIC OF COCAINE USE AMONG PREGNANT BLACK WOMEN OR IN THE BLACK COMMUNITY?

A. I NEVER HEARD ANYONE MAKE THAT STATEMENT IN CONNECTION WITH THE WAY IN WHICH THIS POLICY OR PROTOCOL WAS DERIVED.

Q. DID YOU EVER HEAR ANYONE IN THAT SAME CONTEXT SAY THAT BLACK WOMEN SHOULD BE - ALL BLACK WOMEN SHOULD BE STERILIZED?

A. NO, I DID NOT.

Q. WAS THERE ANY INTENT TO DEVIATE - NO. WAS THERE ANY INTENT IN THE DEVELOPMENT OF THE POLICY TO DISCRIMINATE AGAINST BLACK WOMEN OR -

A. NONE WHATSOEVER.

Q. OR IN THE IMPLEMENTATION OF THE POLICY?

A. THERE WAS NEVER ANY INTENT. NONE.

Q. BIRTH CONTROL. AFTER A WOMEN HAS A BABY, IS IT DISCUSSED?

A. WHEN A WOMEN HAS HAD A BABY IS BIRTH CONTROL DISCUSSED?

Q. YES.

A. CERTAINLY SHOULD BE.

Q. AND DO YOU AND HAVE YOU THROUGHOUT YOUR CAREER AS A TEACHER TAUGHT THAT TO STUDENTS WHO ARE LEARNING TO BE

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF MARTHA JESSUP

[JESSUP 6]

Q. THE AREAS THAT YOU PERFORM YOUR CLINICAL AND TEACHING FUNCTIONS IN THE FIELD OF NURSING, IS IT LIMITED TO A PARTICULAR AREA OR AREAS OF NURSING SPECIALIZATION?

A. MY AREA OF SPECIALTY IS WITH PARTICULAR ATTENTION TO WOMEN AND ALCOHOLISM AND OTHER DRUG DEPENDENCIES. WITH A SPECIAL EMPHASIS ON PERINATAL, WHICH TECHNICALLY MEANS THE PERIOD OF PREGNANCY THROUGH THE PERIOD OF THE FIRST SIX WEEKS AFTER BIRTH. HOWEVER, IT'S COME TO BE THE ENTIRE AREA OF PREGNANCY AND THE PARENTING OF YOUNG CHILDREN AND THAT IS MY PARTICULAR SPECIALTY AND EMPHASIS.

Q. PROFESSOR, ARE YOU LICENSED TO PRACTICE NURSING IN ANY JURISDICTION?

A. IN THE STATE OF CALIFORNIA.

Q. ARE YOU REGISTERED IN ANY OTHER JURISDICTION?

A. YES. I AM REGISTERED IN THE STATE OF NEW YORK AS WELL.

Q. NOW, FOR THE BENEFIT OF THE JURY, WOULD YOU GIVE THEM

SOME OF YOUR PROFESSIONAL EXPERIENCE. I NOTICED THAT YOU GRADUATED FROM COLLEGE IN 1972. IS THAT CORRECT? WITH YOUR BACCALAUREATE DEGREE?

A. YES.

Q. BEGINNING AT APPROXIMATELY THAT POINT IN TIME WOULD YOU GIVE US THE BENEFIT OF WHAT POSITIONS YOU HAVE HAD IN THE FIELD OF NURSING?

A. YES. COMMENCING AT THAT PERIOD OF TIME AFTER GRADUATION I WAS A PUBLIC HEALTH NURSE IN THE SOUTH BRONX IN NEW YORK FOR

* * *

[JESSUP 8]

AND AT THAT POINT IN TIME OF COURSE WE DIDN'T KNOW AS MUCH AS WE KNOW ABOUT IT NOW, BUT WE WERE AND I WAS THE DIRECTOR OF THOSE CLINICAL TRIALS, WHICH MEANS THE CLINICAL RESEARCH PROJECT THAT EVALUATED RISK FACTORS FOR PRE-TERM LABOR AND PRE-TERM DELIVERY. IN THAT CAPACITY I WORKED WITH ALL KIND OF DIFFERENT PATIENTS WHO HAD A VARIETY OF RISK FACTORS, INCLUDING WOMEN WHO HAD DRUG AND ALCOHOL RELATED PROBLEMS. I DID THAT FOR TWO YEARS.

AND AT THAT POINT I THEN MOVED MUCH MORE SPECIFICALLY INTO THE ARENA BECAUSE BY THIS TIME I HAD HAD MY

MASTER'S DEGREE CONFERRED. AND BY THIS TIME AT THAT TIME IN APPROXIMATELY 1981, '82, I BEGAN TO BE MUCH MORE INVOLVED IN WORKING DIRECTLY WITH POPULATIONS OF WOMEN WHO WERE PREGNANT AND DRUG AND ALCOHOL DEPENDENT. OVER THE NEXT PERIOD OF EIGHT TO TEN YEARS I WORKED IN A VARIETY OF TREATMENT SETTINGS WITH ALL KINDS OF WOMEN WHO WERE DRUG AND ALCOHOL DEPENDENT. I WORKED IN METHADONE MAINTENANCE PROGRAMS WITH PREGNANT ADDICTED WOMEN IN THOSE PROGRAMS. ON THOSE PROGRAMS FOR HEROIN DEPENDENT WOMEN. I WORKED IN RESIDENTIAL TREATMENT PROGRAMS WHERE WOMEN WERE THERE WITH THOSE CHILDREN BECAUSE WE HAD THOSE AND DO HAVE THOSE IN CALIFORNIA. I HAVE WORKED IN OUTPATIENT DRUG AND ALCOHOL TREATMENT SETTINGS WHERE YOU HAVE HEARD THAT DESCRIBED WHERE CLIENTS WILL COME AND BE NOT OVERNIGHT, BUT WILL COME FOR COUNSELING.

DURING THIS PERIOD OF TIME ALSO I DID ASSESSMENTS 0F

[JESSUP 9]

THE PROBLEM OF PERINATAL ADDICTION. THAT IS THE USE OF ALCOHOL AND OTHER DRUG DEPENDENCY BY PREGNANT OR PARENTING OF YOUNG CHILDREN WOMEN. I DID A NEEDS ASSESSMENT FOR LOS

ANGELES COUNTY, SAN FRANCISCO AND SANTA CLARA COUNTY, WHICH IS SAN JOSE, CALIFORNIA. THESE ARE THE THREE LARGEST URBAN AREAS IN CALIFORNIA. AND I WAS THE PRIMARY INVESTIGATOR AND CONSULTANT TO DESCRIBE THE PROBLEM IN THE EARLY TO MID EIGHTIES IN THOSE THREE CITIES OF THIS PARTICULAR PROBLEM.

AND I SUBMITTED THOSE REPORTS TO PUBLIC HEALTH DEPARTMENTS. AND AT THAT PERIOD OF TIME THOSE REPORTS WERE THEN, I THINK, VERY IMPORTANT IN LEADING TO THE DEVELOPMENT OF COUNCILS OF CITIZENS AND MEDICAL PERSONNEL IN EACH OF THOSE AREAS OF CALIFORNIA. WHICH WERE PERINATAL SUBSTANCE ABUSE COUNCILS. AND THESE WERE GROUPS THAT WERE TO ADDRESS THIS PROBLEM IN THEIR COMMUNITIES IN CALIFORNIA.

SINCE THAT PERIOD OF TIME, SINCE THE MID-'80S, I HAVE ALSO BEEN VERY ACTIVE TEACHING THE STANDARDS OF PRACTICE, MOSTLY TO NURSES, BUT MOST RECENTLY ALSO TO PHYSICIANS AND ATTORNEYS AND JUDGES, REGARDING THE APPROPRIATE CARE AND MANAGEMENT OF MEDICAL AND HEALTH AND LEGAL ISSUES FOR PREGNANT DRUG AND ALCOHOL DEPENDENT WOMEN.

I HAVE ALSO BEEN AN INVESTIGATOR AND DONE PRIMARY RESEARCH IN THE AREA OF WHAT WE CALL DUAL DIAGNOSIS

DISORDERS. AND THAT IS WHEN AN INDIVIDUAL HAS A PRIMARY MENTAL HEALTH PROBLEM IN ADDITION TO THEIR ALCOHOL OR OTHER

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[JESSUP 11]

AND WORKING WITH THEM, CONSULTING ON CASES TO MAKE SURE THAT EVERYBODY DID THE RIGHT THING IN TERMS OF SETTING UP THE PROGRAMS, GETTING THE PROGRAMS GOING, MAKING SURE THEY WERE TAKING CARE OF THE CLIENTS THE RIGHT WAY.

Q. AND HAVE YOU HELD OTHER SIMILAR POSITIONS TO THAT IN THE PAST?

A. YES, I HAVE.

Q. I CAN'T FIND MY -- THE SLIP OF PAPER, PROFESSOR, BUT ARE YOU PRESENTLY INVOLVED WITH THE UNITED STATES GOVERNMENT IN A PROJECT CONCERNING SUBSTANCE ABUSE?

A. YES. RECENTLY I WROTE A DOCUMENT WHICH WAS CALLED THE CASE MANAGEMENT TREATISE FOR PREGNANT DRUG AND ALCOHOL DEPENDENT WOMEN. AND THAT DOCUMENT HAS RECENTLY BEEN REQUESTED TO BE USED AS THE NATIONAL MODEL FOR CASE MANAGEMENT ON THESE WOMEN BY THE CENTER FOR SUBSTANCE ABUSE TREATMENT, WHICH IS PART OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE FEDERAL GOVERNMENT.

Q. WHEN YOU SAY THESE WOMEN, TO WHAT DO YOU REFER?
A. I REFER TO WOMEN WHO HAVE DRUG AND ALCOHOL DEPENDENCY AND WERE PREGNANT.
Q. PROFESSOR, HAVE YOU WON ANY HONORS OR HAVE YOU RECEIVED ANY AWARD IN YOUR FIELD OF SPECIALTIES?
A. YES, I HAVE. I RECEIVED AN AWARD FOR MY WORK WORKING WITH CHEMICALLY DEPENDENT, ANOTHER WORD FOR ALCOHOL AND DRUG DEPENDENT, HEALTH PROFESSIONALS, WHICH WAS A LIFETIME SERVICE

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[JESSUP 15]

THAT GROUP. THEY HAVE TO READ IT AND APPROVE IT BEFORE IT'S PUBLISHED. AND IT'S A VERY RIGOROUS AND CAREFUL EXAMINATION OF WHAT YOU HAVE DONE. AND THAT'S WHAT A REFEREED JOURNAL IS.
Q WHAT IS THE APPROVAL PROCESS? DO THEY SAY, YEAH, I LIKE THAT OR WHAT ARE THE CRITERIA FOR AN ARTICLE BEING APPROVED BY A REFEREED JOURNAL?
A. THE PROCESS IS THAT YOU SUBMIT THAT, PEOPLE READ IT, ESPECIALLY MEMBERS OF THE REVIEW BOARD OF THE JOURNAL WHO HAVE SOME EXPERTISE IN WHATEVER THE ARTICLE HAPPENS TO BE ABOUT. THEY ASK QUESTIONS, THEY PROBE, THEY LOOK AT YOUR RESEARCH

DESIGN, HOW YOU PUT IT TOGETHER, WAS IT WORTHY, AND THEY BASICALLY CRITICIZE, HOPEFULLY POSITIVELY AND CONSTRUCTIVELY, WHAT YOU HAVE DONE.

Q. DOCTOR, HAVE YOU PUBLISHED ANY REFEREED JOURNALS?

A. YES.

Q. APPROXIMATELY HOW MANY TIMES?

A. TEN.

Q. DOCTOR, SO MUCH FOR ARTICLES. HAVE YOU WRITTEN BOOKS?

A. YES, I HAVE.

HOW MANY BOOKS HAVE YOU WRITTEN? NOT CHAPTERS IN BOOKS, BOOKS?

A. ONE.

Q. AND WHAT WAS THE TITLE OF THAT BOOK, DOCTOR?

A. THAT -- THE TITLE OF THAT BOOK IS DRUG DEPENDENCY AND PREGNANCY MANAGING WITHDRAWAL. AND THE ENTIRE BOOK IS ABOUT

[JESSUP 16]

CHAPTER BY CHAPTER, IT IS ABOUT HOW YOU MANAGE WITHDRAWAL FROM DRUGS AND ALCOHOL IN A WOMAN WHO IS PREGNANT.

Q. HAVE YOU COAUTHORED BOOKS?

A. YES.

Q. HOW MANY?

A. ONE.

Q. AND WHAT -- WHO WAS YOUR CO-AUTHOR?

A. LORI SILVERMAN.

Q. AND WHAT WAS THE SUBSTANCE OF THAT -- I DIDN'T MEAN TO

ASK THAT. WHAT WAS THE SUBJECT MATTER OF THAT BOOK?
A. THIS IS THE CASE MANAGEMENT MODELS BOOK THAT HAS RECENTLY BEEN PUBLISHED AND RECENTLY PICKED UP BY THE FEDERAL GOVERNMENT FOR USE IN THEIR DOCUMENTS THAT THEY PUT OUT. THEY PUT OUT A WHOLE SERIES CALLED THE TREATMENT AND APPROVEMENT PROTOCOL SERIES, WHICH IS SUPPOSED TO BE THE GOLD STANDARD AS APPROVED BY THE FIELD AND BY THE FEDERAL GOVERNMENT FOR WORKING WITH THIS POPULATION.
Q. DOCTOR, HAVE YOU -- I'M SORRY, NOT DOCTOR.
MS. SHOWERS: WITH ALL DUE RESPECT, THIS WITNESS IS NOT A DOCTOR.
MR. WHERRY: I KNOW I MISSPOKE, AND I WITHDREW THAT AND I CHANGED IT, AND I APOLOGIZE FOR IT.
THE COURT: OKAY.
Q. (BY MR. WHERRY, CONTINUING) PROFESSOR, HAVE YOU WRITTEN ANY CHAPTERS IN BOOKS?

[JESSUP 17]

A. YES, I HAVE.
Q. APPROXIMATELY HOW MANY?
A. THREE. FOUR.
Q. AND WHAT WAS THE GENERAL SUBJECT MATTER OF THOSE THREE OR FOUR CHAPTERS?
A. THE SUBJECT MATTER WAS, AGAIN, APPROPRIATE MANAGEMENT OF

THE MEDICAL AND PREGNANCY OR OBSTETRIC-RELATED PROBLEMS FOR THESE WOMEN, WITH A SPECIAL FOCUS ON HOW TO ENGAGE THESE WOMEN SO THAT THEY STAY IN PRENATAL CARE AND GET INTO TREATMENT. AND HOW PROFESSIONALS, NURSES AND PHYSICIANS CAN HAVE A ROLE THAT IS POSITIVE AND THERAPEUTIC. IN OTHER WORDS, HELPFUL FOR THAT INDIVIDUAL.

Q. PROFESSOR, HAVE YOU WRITTEN ANY MONOGRAPHS?

A. YES.

Q. WHAT IS A MONOGRAPH?

A. A MONOGRAPH IS SHORTER THAN A BOOK, LONGER THAN A PAMPHLET, EIGHT BY ELEVEN I'D SAY, IF YOU WILL, ON ANY TOPIC ESSENTIALLY.

Q. AND, PROFESSOR, HAVE YOU BEEN ACTIVE IN THE PUBLICATION OR CONTRIBUTION TO VARIOUS NEWS LETTERS IN THE GENRE? IN THE AREA?

A. YES, I HAVE BEEN, BECAUSE IN CALIFORNIA WE HAVE GONE THROUGH A PERIOD OF INTENSE PUBLIC FOCUS AND CAREFUL EXAMINATION OF ISSUES. AND I HAVE WRITTEN AGAIN ON THE STANDARDS OF TREATMENT AND HOW TO RELATE TO DRUG AND ALCOHOL

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[JESSUP 21]

Q. AND WOULD YOU BE GOOD ENOUGH TO TELL THE JURY, AGAIN IN

SUMMARY, THE KIND OF THINGS THAT YOU LOOKED AT, AND WITHHOLD THE OPINIONS AT THIS POINT, BUT JUST THE KIND OF THINGS THAT YOU LOOKED AT, AND THEN I'LL HAVE SOME MORE QUESTIONS.

A. UMM-HMM. I HAVE LOOKED AT THE MEDICAL RECORDS OF THE PLAINTIFFS'.

Q. ALL OF THEM?

A. YES.

Q. OKAY.

A. WHEN THEY CAME TO THE MEDICAL UNIVERSITY. AND LOOKED AT THE DOCUMENTATION OF THE EXPERIENCES THAT THEY HAD THERE. I ALSO EXAMINED THE MEDICAL RECORDS OF ANOTHER GROUP --

Q. EXCUSE ME, PROFESSOR. WHAT DOCUMENTATION OF THE EXPERIENCES THAT THEY HAD THERE, WHAT DO YOU MEAN BY THAT?

A. STAFF NOTES.

Q. I'M SORRY?

A. STAFF NOTES.

Q. STAFF OF?

A. OF MUSC.

Q. FINE. THANK YOU.

A. YES. I ALSO LOOKED AT ANOTHER GROUP OF PATIENTS WHO WERE NOT THE PLAINTIFFS, BUT A SEPARATE GROUP WHO WERE AT THE MEDICAL UNIVERSITY WITH, IN THEORY, THE SAME PROBLEM AS THE PLAINTIFFS. IN OTHER WORDS, WOMEN WHO

MS. SHOWERS: WE OBJECT TO ANY EVIDENCE OF MEDICAL

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[JESSUP 34]

TESTIMONY IS GOING TO BE SO THAT I CAN BETTER FOLLOW IT THROUGH.

WE'RE GOING TO HEAR IT, AND THEN POSSIBLY AT THE END OF HER TESTIMONY I'LL RECONSIDER SOME OF THESE QUESTIONS. BUT IN THE MEANTIME I'M GOING TO PERMIT YOU TO HEAR HER TESTIMONY AT LEAST AT THE PRESENT TIME, AND THEN IF SOME OF IT SHOULD BE TAKEN AWAY FROM YOUR CONSIDERATION BECAUSE OF OUR RULES OF EVIDENCE, THEN WE'LL DISCUSS THAT. OTHERWISE YOU CAN CONSIDER IT AND GIVE IT SUCH WEIGHT AS YOU THINK IT MAY RECEIVE.

YOU MAY CONTINUE.

MR. WHERRY: THANK YOU, SIR.

Q. (BY MR. WHERRY, CONTINUING) PROFESSOR, WITH THIS FIRST OPINION THAT YOU HAVE RENDERED, YOU INDICATED THAT THE PROGRAM IN YOUR OPINION WAS PUNITIVE. WHAT DO YOU MEAN BY PUNITIVE?

A. IN MY WORK AND IN THE BEST INVESTMENT OF TRYING TO GET THROUGH TO WOMEN WHO ARE DRUG AND ALCOHOL DEPENDENT, WE WORK VERY HARD TO KEEP WOMEN IN PRENATAL CARE. WOMEN WHO HAVE THESE PROBLEMS IN PRENATAL CARE, WE WORK VERY HARD TO DEVELOP TRUST. WE WORK VERY HARD TO DEVELOP WHAT I HAVE BEEN CALLING A THERAPEUTIC ALLIANCE.

Q. EXCUSE ME. WHY IS THAT IMPORTANT? WHY IS TRUST AND THERAPEUTIC ALLIANCE IMPORTANT?
A. I WILL GET TO THAT.
Q. OKAY.
A. WE AVOID ANY LANGUAGE --

* * *

[JESSUP 39]

YES.
MS. SHOWERS: OBJECT TO LEADING.
MR. WHERRY: IT'S PRELIMINARY, JUDGE.
THE COURT: GO AHEAD.
MR. WHERRY: THANK YOU, SIR.
(BY MR. WHERRY, CONTINUING) WOULD YOU EXPLAIN WHAT YOU MEANT BY THAT BY IT BEING HARMFUL? HOW WAS IT HARMFUL?
A. I THINK IT WAS HARMFUL IN THAT IT IMMEDIATELY, UPON THE WOMEN TESTING POSITIVE IN THEIR URINE SAMPLE FOR COCAINE, THEY WERE PRESENTED ESSENTIALLY WITH A VERY THREATENING MESSAGE. THEY - IT WAS HARMFUL IN TERMS OF ESTABLISHING FEAR. AND I COME TO THAT CONCLUSION BY DOCUMENTATION OF EVENTS AND PATIENTS' REACTIONS TO THAT PRESENTATION OF THAT POLICY TO THEM.
AND I THINK IT WAS HARMFUL IN AS MUCH IF THEY'RE GOING TO RUN AWAY OR BE AFRAID, THEY'RE NOT GOING TO COME BACK

FOR PRENATAL CARE, AND WITHOUT THEM IN PRENATAL CARE AND WITHOUT THEM IN TREATMENT FOR THEIR ALCOHOL OR OTHER DRUG PROBLEM, WE CAN'T DO ANYTHING TO IMPROVE THESE OUTCOMES IN THE WOMEN OR IN THEIR BABIES. AND SO IN THAT REGARD IT WAS HARMFUL.

Q. PROFESSOR, I FORGET YOUR EXACT WORDS, BUT I THINK WHEN -- SOMETHING IN THE JARGON WHEN THEY WERE IDENTIFIED, IDENTIFIED AND FIRST CONFRONTED, THERE WAS A THREATENING MESSAGE GIVEN. WAS THAT SUBSTANTIALLY WHAT YOUR WORDS WERE?

* * *

[JESSUP 40]

A. YES.

Q. WHAT WAS THE THREATENING MESSAGE THAT YOU MAKE REFERENCE TO AND WHAT WAS THE THREAT?

A. BY MY REVIEW OF THESE RECORDS, I CAN SEE THE WAYS IN WHICH THE PLAINTIFFS WERE SHOWN THE POLICY AS IT WAS WRITTEN ON A PIECE OF PAPER WHICH SAID TO THEM, YOU HAVE TESTED POSITIVE. IF YOU TEST POSITIVE AGAIN YOU WILL BE ARRESTED. AND THEY WERE TOLD THAT THEY HAD TO SIGN THIS. AND THIS WAS WITHOUT THE BENEFIT OF IN DEPTH EVALUATION OF THEIR PROBLEM. WITHOUT -- AND UNDERSTAND I'M LOOKING AT THE DOCUMENTATION OF

THESE EVENTS, SO I SEE NO DOCUMENTATION OF IN DEPTH EVALUATION. AND IN THAT REGARD I THINK THAT THEY WERE PRESENTED THIS INFORMATION AND IT WAS THREATENING TO THEM.

Q. WHY IS THAT BAD?

A. IT'S BAD BECAUSE IT SETS UP A DYNAMIC THAT CHANGES THE THERAPEUTIC RELATIONSHIP IN THIS CASE BETWEEN THE NURSE AND THE PATIENT. THE DUTY OF THE NURSE IS TO PRESERVE AND RESTORE HEALTH. WE HAVE ETHICAL OBLIGATIONS TO DO THAT AS NURSES. AND I THINK THE IMMEDIATE INJECTION OF LEGAL THREAT IMMEDIATELY CHANGES THE NATURE OF THAT RELATIONSHIP THAT A NURSE HAS A WITH A PATIENT. AND I THINK FOR A NURSE TO HAVE THAT ROLE IT SETS UP A VERY DEADLY DYNAMIC THAT CAN ACTUALLY KEEP PEOPLE AWAY FROM SOURCES OF HELP.

MR. WHERRY: YOUR HONOR, I WOULD LIKE TO SHOW THE WITNESS JOINT EXHIBIT NUMBER 6. I DON'T KNOW WHETHER THE

[JESSUP 41]

JOINT EXHIBITS HAVE BEEN RECEIVED INTO EVIDENCE YET OR NOT. BUT WE BOTH AGREE THAT THEY SHOULD BE. SO MAY I SHOW THIS WITNESS?

THE COURT: CERTAINLY.

Q. (BY MR. WHERRY, CONTINUING) LET ME SHOW YOU WHAT HAS BEEN MARKED JOINT EXHIBIT NUMBER 6, AND ASK YOU WHETHER YOU RECOGNIZE THAT DOCUMENT HAVING SEEN IT BEFORE?

A. YES, I HAVE.

Q. AND IS THAT ONE OF THE THREATENING DOCUMENTS THAT YOU TALKED ABOUT?

A. YES.

Q. WHAT ABOUT THAT DOCUMENT -- WELL, WHAT ABOUT THAT DOCUMENT IS THREATENING? WHAT LANGUAGE IN THERE IS THREATENING? WOULD YOU READ IT FOR THE JURY.

A. YOU WOULD LIKE ME TO READ THE ENTIRE THING?

Q. NO, THE THREATENING LANGUAGE.

A. OKAY. THEY'RE SPEAKING ABOUT MAKING A REFERRAL TO SUBSTANCE ABUSE COUNSELING. THIS REFERRAL WILL GIVE -- THIS REFERRAL WILL GIVE YOU THE OPPORTUNITY TO REHABILITATE YOURSELF FOR THE GOOD OF YOURSELF AND YOUR CHILD. THAT IS NOT THREATENING.

THE NEXT SECTION I BELIEVE IS. A REFERRAL WILL ALSO BE MADE TO THE CHARLESTON COUNTY DEPARTMENT OF SOCIAL SERVICES UNDER SOUTH CAROLINA CHILD PROTECTION LAW. DSS WILL DETERMINE WHETHER THE BEST INTEREST OF YOUR CHILD REQUIRES THE REMOVAL

OF THAT CHILD FROM YOUR CUSTODY DURING YOUR REHABILITATION.

AND I WOULD EMPHASIZE THE FOLLOWING SECTION, A THREATENING: IF YOU FAIL TO COMPLETE SUBSTANCE ABUSE COUNSELING, FAIL TO COOPERATE WITH THE DEPARTMENT OF SOCIAL SERVICES IN THE PLACEMENT OF YOUR CHILD AND SERVICES TO PROTECT THAT CHILD, OR IF YOU FAIL TO MAINTAIN CLEAN URINE SPECIMENS DURING YOUR SUBSTANCE ABUSE REHABILITATION, YOU WILL, UNDERLINED, BE ARRESTED BY THE POLICE AND PROSECUTED BY THE OFFICE OF THE SOLICITOR.

TO ME THIS IS AN EXTRAORDINARY DEPARTURE FROM A TRADITIONAL RELATIONSHIP THAT A NURSE EVALUATING A WOMAN WHO HAS COME TO A MEDICAL THERAPEUTIC FACILITY FOR HELP SHOULD BE DOING. IT IS A DRAMATIC DEPARTURE FROM ANYTHING THAT IS CONSISTENT WITH ANY TRADITIONS OF HELP.

Q. AND ARE THERE CERTAIN THINGS, CERTAIN MINIMUM REQUIREMENTS FOR EFFECTIVE AND POSITIVE NURSING THAT ARE GENERALLY ACCEPTED STANDARDS THROUGHOUT THE COUNTRY?

A. VERY DEFINITELY.

Q. AND IS THIS LETTER BEING PRESENTED BY A NURSE, IN THE CIRCUMSTANCES AS YOU CAME TO UNDERSTAND IT AT MUSC, CONSISTENT

WITH A MINIMUM STANDARD REQUIRED FOR EFFECTIVE AND APPROPRIATE NURSING?

A. ABSOLUTELY NOT.

Q. MAY I SHOW YOU JOINT EXHIBIT NUMBER 7?

MS. SHOWERS: YOUR HONOR, WE OBJECT.

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[JESSUP 47]

THE COURT: COUNSELING PEOPLE THAT ARE INVOLVED WITH DRUGS?

MR. WHERRY: NO, SIR. SHE IS A NURSE TREATING SUBSTANCE-ABUSING PREGNANT WOMEN AND ATTENDING TO THEM POSTPARTUM WITH THEIR CHILDREN, I THINK SHE SAID UP TO SIX WEEKS POSTPARTUM, AND BEING INVOLVED IN THE THERAPEUTIC SETTING, WHICH IS EXACTLY WHAT THE AVOWED POLICY WAS AT MUSC. AND THERE WAS NOT A NURSE AT MUSC THAT WAS DOING TOXICOLOGY, AND SHE CAN'T DO TOXICOLOGY. THAT'S NOT WHAT IT IS ABOUT. IT WAS ABOUT THE WAY THEY HANDLED AND TREATED AND MAINTAINED AND WE SAY COERCED AND INAPPROPRIATELY DEALT WITH THE SUBSTANCE-ABUSING PREGNANT WOMEN, BOTH ANTEPARTUM AND POSTPARTUM. AND THAT'S ALL THIS WOMEN HAS DONE.

THE COURT: OKAY. I'LL SEE WHERE SHE IS GOING. GO

AHEAD.

MR. WHERRY: THANK YOU, SIR.

THE COURT: I THINK IT WAS WHETHER THIS POLICY IS GOING TO ACCOMPLISH THE PROTECTION OF THE FETUS.

MR. WHERRY: YES, SIR.

Q. (BY MR. WHERRY, CONTINUING) DO YOU HAVE OPINION, TO A REASONABLE DEGREE OF SCIENTIFIC PROBABILITY, AS TO WHETHER OR NOT THE INTERAGENCY POLICY, AS YOU CAME TO LEARN IT, WOULD ACCOMPLISH FETAL PROTECTION?

A. YES, I HAVE AN OPINION.

Q. AND WHAT IS THAT OPINION?

[JESSUP 48]

A. MY OPINION IS THAT THE POLICY AS IT WAS DESIGNED BY STAFF OF THE MUSC, AND THAT IMPLEMENTED BY STAFF OF MUSC, COULD NOT PROMOTE FETAL PROTECTION.

Q. WHY?

A. IT COULD NOT PROMOTE FETAL PROTECTION FOR SEVERAL REASONS. ONE WAS THAT IT WAS LOOKING AT ONE DRUG, SPECIFICALLY COCAINE, WHEN WE KNOW THAT ALCOHOL, TOBACCO, HEROIN, METHAMPHETAMINES AND OTHER SUBSTANCES ALSO CAUSE PROBLEMS IN THE FETUS AND IN THE NEWBORN. WHEN YOU HAVE A POLICY THAT SPECIFICALLY FOCUSES ON ONE DRUG, YOU CANNOT ACCOMPLISH FETAL PROTECTION ACROSS THE BOARD.

ADDITIONALLY, AND I HAVE STATED PREVIOUS TO THIS MOMENT, I BELIEVE THAT IT DETERRED WOMEN AND FRIGHTENED THEM AND SCARED THEM AWAY FROM THE CURRENT --

MS. SHOWERS: YOUR HONOR, THERE IS NO EVIDENCE OF THIS AND NOTHING TO BASE IT ON.

THE COURT: SAY WHAT?

MS. SHOWERS: THERE HAS BEEN NO EVIDENCE PRESENTED.

THE COURT: I'M GOING TO PERMIT HER TO TESTIFY. GO AHEAD.

Q. (BY MR. WHERRY, CONTINUING) CONTINUE WITH YOUR ANSWER.

A. SECONDLY, I THINK THAT IT WAS HARMFUL BECAUSE, AGAIN, IT WAS FRIGHTENING LANGUAGE. IT WAS A RADICAL DEPARTURE FROM WHAT PATIENTS ARE USED TO WHEN THEY COME INTO THE HOSPITAL TO GET HELP. AND IT ALTERED THE RELATIONSHIP PERMANENTLY BETWEEN

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[JESSUP 54]

GIVE THE TESTIMONY PROPER CONSIDERATION. I'M GOING TO OVERRULE THE OBJECTION WITH THOSE COMMENTS.

YOU MAY PROCEED.

MR. WHERRY: THANK YOU, SIR.

THE COURT: DO YOU WANT THE QUESTION READ BACK. SHE WILL BE GLAD TO READ IT BACK.

MR. WHERRY: SEE IF THE WITNESS RECALLS IT.

THE WITNESS: NO.

(QUESTION READ BACK AS FOLLOWS:)

NOW, WITH RESPECT TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, AND THE ACTIONS OF NURSE SHIRLEY BROWN INSOFAR AS THEY ARE APPLICABLE TO THE TEN PLAINTIFFS, AND FROM THE PERSPECTIVE OF MOTIVATION AND HISTORY, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THERE WAS ANY POTENTIAL FOR THE INTERAGENCY POLICY BEING SUCCESSFUL FOR FETAL PROTECTION AND THE APPROPRIATE CARE AND TREATMENT OF THE SUBSTANCE-ABUSING PREGNANT WOMEN?

THE COURT: OKAY.

Q. (BY MR. WHERRY, CONTINUING) DO YOU HAVE AN OPINION?

A. YES, I DO HAVE AN OPINION.

Q. WHAT IS THAT OPINION?

A. MY OPINION IS THAT THE POLICY AS CONSTRUCTED AND WRITTEN DOWN BY MUSC COULD NOT PROMOTE FETAL PROTECTION.

Q. WHY?

A. IT COULD NOT PROMOTE FETAL PROTECTION BECAUSE IT

[JESSUP 55]

INITIALLY, BECAUSE OF THE REPORTING MECHANISMS TO THE DEPARTMENT OF SOCIAL SERVICES AND TO LAW ENFORCEMENT, IT COULD

NOT PROMOTE FETAL PROTECTION BECAUSE IT CHANGED THE RELATIONSHIP BETWEEN THE PATIENT AND THE CAREGIVERS, IT CREATED FEAR IN THE POPULATION AND HAD THE IMPACT OF FRIGHTENING THE WOMEN, MAKING THEM FEARFUL AND HAVING CONCERNS ABOUT COMING IN FOR CARE IN THE FUTURE.

MS. SHOWERS: YOUR HONOR, I OBJECT AND MOVE TO STRIKE. IT LACKS FOUNDATION.

THE COURT: I'LL PERMIT IT.

Q. (BY MR. WHERRY, CONTINUING) PROFESSOR, LET ME RETURN BACK TO SOME QUESTIONS I WAS ASKING SEVERAL HOURS AGO. IN THE DOCUMENTS THAT YOU CONSIDERED IN FORMING THE OPINIONS THAT YOU HAVE FORMED, SOME OF WHICH YOU TESTIFIED TO SOME ARE YET TO COME, WAS ONE OF THE THINGS THAT YOU REVIEWED WHAT HAS BECOME TO BE KNOWN AS THE INTERAGENCY POLICY?

A. YES.

Q. AND WHAT IS YOUR UNDERSTANDING, THAT IS THE UNDERSTANDING THAT YOU BASE YOUR OPINIONS ON AS TO WHAT THE INTERAGENCY POLICY WAS THAT WAS IMPLEMENTED AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. MY UNDERSTANDING --

THE COURT: IS IT A WRITTEN DOCUMENT.

MR. WHERRY: YES, SIR, THERE ARE.

THE COURT: SAY WHAT?

* * *

[JESSUP 79]

A. SPECIFICALLY THE TREATMENT OF ALCOHOL AND OTHER DRUG DEPENDENT WOMEN WHO ARE PREGNANT OR PARENTING YOUNG CHILDREN.

Q. NOW, DOCTOR - I'M SORRY. PROFESSOR, WOULD YOU DESCRIBE FOR THE JURY, PLEASE, WHAT WAS AVAILABLE IN THE LITERATURE WITH RESPECT TO THE TREATMENT OF SUBSTANCE ABUSING PREGNANT WOMEN IN THE LATE PART OF THE EIGHTIES. NINETEEN HUNDRED AND EIGHTY-EIGHT AND EIGHTY-NINE?

A. THERE WAS A GREAT DEAL OF INFORMATION WHICH REALLY SPANNED THE PREVIOUS 15 YEARS, SPECIFICALLY DESCRIBING TECHNIQUES FOR CREATING PROGRAMS FOR THIS POPULATION THAT WERE HOSPITAL BASED, THAT WOULD ALLOW FOR APPROPRIATE AND GOOD IDENTIFICATION OF THESE WOMEN IN THE HOSPITAL, THAT WOULD ALLOW FOR THEM TO COME BACK TO THE HOSPITAL FOR PRENATAL CARE AND DRUG TREATMENT, EITHER AT THAT FACILITY OR OUTSIDE OF THE FACILITY.

THERE WAS MUCH RESEARCH DESCRIBING THE WAYS IN WHICH NURSES AND PHYSICIANS AND SOCIAL WORKERS AND OTHER HEALTH CARE PROVIDERS SHOULD RELATE TO ALCOHOL AND DRUG DEPENDENT WOMEN

SUCH AS TO CAUSE THEM TO WANT TO COME BACK.

THERE WAS ALSO A GREAT DEAL OF INFORMATION ABOUT THE EFFECTS OF ALCOHOL AND DRUG USE BY PREGNANT WOMEN, ALTHOUGH WE WOULD CONSIDER THAT PERIOD OF TIME A PRELIMINARY PHASE OF THOSE FINDINGS.

Q. PROFESSOR, WAS THERE A SPECTRUM OF ALTERNATIVES AVAILABLE AT THAT POINT IN TIME FOR THE TREATMENT AND CARE OF

* * *

[JESSUP 89]

A. MY OPINION IS IT WAS NOT EFFECTIVE BECAUSE -

THE COURT: SHE CAN EXPRESS THE BASIS, BUT UNLESS YOU QUALIFIED UNDER RULE 703, IT DOES APPEAR TO BE HEARSAY. AND YOU HAVEN'T MADE -

MR. WHERRY: IT MAY NOT BE ADMISSIBLE, BUT I THINK SHE IS ENTITLED TO RELY UPON THINGS THAT WOULDN'T ORDINARILY BE ADMISSIBLE IN FORMING OPINIONS.

THE COURT: THAT'S WHAT THAT DEALS WITH, BUT YOU HAVE NOT TOUCHED ON IT, AND THEREFORE I HAVE TO RULE ON THE HEARSAY WHICH DID.

Q. (BY MR. WHERRY, CONTINUING) DESCRIBE WHAT THE OPINIONS ARE THAT YOU HAD WITH RESPECT TO THE POLICY?

A. I THOUGHT IT WAS INEFFECTIVE AND DO THINK IT WAS INEFFECTIVE BECAUSE WOMEN LEFT THE HOSPITAL AFTER THEY HAD HEARD THE POLICY DESCRIBED, AFTER THEY WERE INFORMED THAT THEY COULD BE ARRESTED IF THEY DID NOT COMPLY WITH THE POLICY. AND I ALSO BELIEVE THAT IT DID NOT RESULT IN WOMEN GETTING THE HELP THAT THEY NEEDED.

Q. WHY?

A. THEY WERE NOT REFERRED TO PROGRAMS, IN MY UNDERSTANDING, THAT WERE SPECIFIC AND APPROPRIATE FOR PREGNANT OR POSTPARTUM WOMEN. THEY SPECIFICALLY, WHEN THEY WERE ASKED FOR PRENATAL - WHEN THEY WERE ASKED IF THEY WOULD ATTEND AND SOME OF THE WOMEN SAID THAT, YES, THEY WOULD ATTEND, THEY WERE NOT GIVEN THE RESOURCES -

[JESSUP 90]

MS. SHOWERS: I OBJECT TO HEARSAY.

THE COURT: I COULD NOT HEAR YOU.

MS. SHOWERS: SHE IS QUESTIONING PEOPLE. I DON'T KNOW WHO SHE IS TALKING ABOUT, PLAINTIFFS OR PATIENTS. IT'S ALL HEARSAY.

THE COURT: WELL, I HAVE ALREADY SUSTAINED THE OBJECTION ON THE GROUNDS OF HEARSAY. I HAVE SUGGESTED THAT

YOU COULD GET IT IN UNDER RULE 703, BUT YOU APPARENTLY DON'T WANT TO TRY THAT, AND SO I SUSTAIN THE OBJECTION ON THE GROUNDS THAT IT'S HEARSAY.

MR. WHERRY: ACTUALLY, SIR, I THOUGHT SHE WAS COMPLYING WITH RULE 703, AND I OBVIOUSLY DON'T UNDERSTAND THAT RULE.

THE COURT: THAT RULE SAYS THAT EVEN THOUGH SOMETHING IS HEARSAY AND NOT ADMISSIBLE, IF IT'S THE TYPE MATERIAL THAT A WITNESS SUCH AS THIS REASONABLY RELIES ON IN EXPRESSING OPINIONS, AND THEN THEY CAN RELY ON IT EVEN THOUGH IT'S NOT ADMISSIBLE BECAUSE IT'S HEARSAY.

MR. WHERRY: I THOUGHT SHE TESTIFIED TO THAT LAST TIME SHE WAS ON THE STAND AS TO WHAT SHE RELIED UPON. AND PERHAPS I'M WRONG, AND I'LL BE GLAD TO ASK HER AGAIN. AND I BELIEVE THAT I ASKED THAT AND THEN YOU INDICATED THAT YOU WANTED ME TO STOP BECAUSE YOU WANTED

THE COURT: MAYBE YOU DID.

MR. WHERRY: YOU WANTED -

[JESSUP 91]

THE COURT: OKAY.

Q. (BY MR. WHERRY, CONTINUING) BUT, PROFESSOR, WHAT DID YOU

RELY UPON? WHAT THINGS DID YOU LOOK AT? WHAT DID YOU CONSIDER IN FORMING THE OPINIONS THAT YOU FORMED WITH RESPECT TO THIS POLICY?

A. FOR ONE THING, AS A MEMBER OF THE FEDERAL PANEL ON THE BEST WAY TO DEAL WITH DRUG AND ALCOHOL DEPENDENT WOMEN, WE REVIEWED A NUMBER OF MATERIALS. ONE OF THE THINGS THAT WE LOOKED AT WAS AN ARTICLE THAT WAS WRITTEN BY SHIRLEY BROWN AND DR. HORGER DESCRIBING THE PROBLEM AT MUSC AND WHAT THEY HAD ATTEMPTED TO DO ABOUT IT.

Q. LET ME STOP YOU HERE. IS THAT THE KIND OF THING REASONABLY RELIED UPON BY EXPERTS IN YOUR FIELD TO FORM OPINIONS WITH RESPECT TO THE AREA THAT WE'RE DEALING WITH, THE ADEQUACY OF PARTICULAR METHODS OF TREATING PREGNANT, SUBSTANCE-ABUSING WOMEN?

A. GENERALLY SPEAKING IT IS.

Q. WHAT ELSE DID YOU CONSIDER?

A. WHAT ELSE I CONSIDERED WERE DESCRIPTIONS OF THE POLICY INCLUDING THE VERY POLICY ITSELF, WHICH I READ.

Q. IS THAT THE KIND OF THING REASONABLY RELIED UPON BY EXPERTS IN YOUR FIELD IN ORDER TO FORM AN OPINION AS TO THE ADEQUACY OF TREATMENT PROGRAMS FOR PREGNANT, SUBSTANCE-ABUSING WOMEN?

A. YES.

[JESSUP 92]

WHAT ELSE DID YOU CONSIDER?
A. I ALSO READ A DESCRIPTION OF THE MODEL THAT WAS WRITTEN BY CHARLES CONDON, WHICH WAS A NARRATIVE DESCRIPTION OF THE PROGRAM AND OF THE POLICY.
Q. AND IS THAT THE KIND OF THING ORDINARILY AND REASONABLY RELIED UPON EXPERTS IN YOUR FIELD IN ORDER TO FORM OPINIONS WITH RESPECT TO THE ADEQUACY FOR TREATMENT PROGRAMS FOR PREGNANT, SUBSTANCE-ABUSING WOMEN?
A. YES.
Q. WHAT ELSE DID YOU CONSIDER?
A. I ALSO CONSIDERED, I WOULD SAY, APPROXIMATELY 25 TO 35 SEPARATE RESEARCH PAPERS, WHICH I CAN CITE IF YOU WOULD LIKE ME TO, ABOUT THE VALUE OF PUNITIVE INTERVENTIONS VERSUS THOSE THAT ARE EXPLICITLY TAILORED TO FACILITATE WOMEN INTO TREATMENT THAT GIVES THEM TREATMENT RESOURCES AND THAT TREATMENT IS APPROPRIATE.
Q. THESE ARTICLES AND DOCUMENTS THAT YOU CONSIDERED, ARE THEY THE KIND OF THING REASONABLY RELIED UPON BY EXPERTS IN ORDER TO FORM OPINIONS AS TO ADEQUACY OF TREATMENT PROGRAMS FOR PREGNANT SUBSTANCE-ABUSING WOMEN?
YES.
Q. WHAT ELSE DID YOU CONSIDER?

A. I ALSO CONSIDERED INFORMATION THAT WAS PRESENTED TO ME IN TERMS OF THE IMPACT ON THE PATIENTS, ON THE PLAINTIFFS. AND ALSO -

[JESSUP 93]

Q. WHERE DID THAT INFORMATION COME FROM?
A. THAT CAME FROM THEIR MEDICAL RECORDS.
Q. ARE THE MEDICAL RECORDS THE KINDS OF THINGS REASONABLY RELIED UPON BY EXPERTS IN YOUR FIELD TO FORM OPINIONS AS TO ADEQUACY OF TREATMENT PROGRAMS FOR PREGNANT SUBSTANCE-ABUSING WOMEN?
A. YES.
Q. WHAT ELSE DID YOU CONSIDER, IF ANYTHING?
A. I ALSO CONSIDERED MEDICAL RECORDS OF OTHER PATIENTS UNDER SIMILAR CIRCUMSTANCES WHO CAME TO MUSC SEEKING PRENATAL CARE. AND THAT WAS A GROUP OF WOMEN WHO CAME TO THE PRENATAL CLINIC AT MUSC DURING THE PERIOD WHICH HAS BEEN REFERRED TO AS PRE-POLICY. THAT MEANS PRIOR TO THE PERIOD OF LATE SEPTEMBER 1989.
AND I ALSO LOOKED AT -
Q. LET ME STOP YOU THERE. WERE THOSE THE KIND OF THINGS CONSIDERED BY EXPERTS IN YOUR FIELD AND REASONABLY RELIED UPON

IN ORDER TO FORM OPINIONS AS TO THE ADEQUACY OF TREATMENT PROGRAMS FOR PREGNANT, SUBSTANCE-ABUSING WOMEN?
A. I BELIEVE SO.
Q. WHAT ELSE DID YOU CONSIDER?
A. I ALSO LOOKED AT A GROUP OF MEDICAL RECORDS OF WHITE WOMEN WHO CAME TO MUSC FOR PRENATAL CARE AND WHO ALSO TESTED POSITIVE FOR COCAINE.
Q. IS THAT THE KIND OF THINGS REASONABLY RELIED UPON BY

[JESSUP 94]

EXPERTS IN YOUR FIELD IN ORDER TO FORM OPINIONS AS TO ADEQUACY OF TREATMENT PROGRAMS FOR PREGNANT, SUBSTANCE-ABUSING WOMEN?
A. I BELIEVE SO.
WHAT ELSE DID YOU CONSIDER, IF ANYTHING?
A. THAT WOULD BE JUST ABOUT IT.
Q. OKAY. NOW, DOCTOR, LET'S GO BACK TO THE OPINIONS THAT YOU HAD. I THINK YOU WERE GIVING US AN OPINION WITH RESPECT TO THE EFFECTIVENESS OF THE INTERAGENCY POLICY WITH RESPECT TO GETTING WOMEN INTO APPROPRIATE TREATMENT PROGRAMS WHO HAD ABUSED SUBSTANCES DURING THEIR PREGNANCY; IS THAT RIGHT?
A. YES.
Q. WOULD YOU CONTINUE WITH THE OPINIONS, PLEASE?
A. YES. AFTER REVIEWING THE PLAINTIFF'S MEDICAL RECORD AND

LOOKING AT THE WAY IN WHICH THE POLICY WAS IMPLEMENTED, IN OTHER WORDS THE WAY IN WHICH THE PLAINTIFFS WERE APPROACHED AND THE CIRCUMSTANCES THAT OCCURRED TO THEM, THINGS THAT HAPPENED TO THEM, WHAT THEY DID AS A RESULT OF HEARING ABOUT THE POLICY OR HAVING THE POLICY IMPLEMENTED UPON THEM, SO TO SPEAK, IT LED ME TO CONCLUDE THAT IT WAS NOT EFFECTIVE.

Q. WHY?

A. IN SOME CASES THE WOMEN, AND IN THIS CASE NOW I'M SPECIFICALLY REFERRING TO PLAINTIFFS, STATED THAT THEY WERE READY FOR TREATMENT, THAT THEY WANTED TREATMENT, THAT THEY WERE WILLING TO GO TO TREATMENT. AND EVEN IN SPITE OF THAT, THEY WERE ARRESTED AND REMOVED TO THE COUNTY JAIL

[JESSUP 95]

FACILITY.

Q. DOCTOR, ARE THERE EFFECTIVE WAYS IN THE MAINSTREAM OF SUBSTANCE ABUSE COUNSELING TO ENCOURAGE TREATMENT?

A. YES.

Q. DESCRIBE FOR THE JURY WHAT THOSE WAYS OF ENCOURAGING TREATMENT ARE?

A. YOU DO THAT IN THE FACILITY BY PROVIDING A COMPASSIONATE STATEMENT TO YOUR PATIENT.

Q. WHAT DOES THAT MEAN?

A. IT MEANS THAT YOU SAY WE ARE HERE TO HELP YOU, WHAT YOU TELL US IS CONFIDENTIAL, WE WILL USE THAT TO GET YOU TO THE RIGHT PROGRAM AND WE WILL NOT REPORT YOU TO ANY AUTHORITIES, SO THAT THERE WILL NOT BE LEGAL CONSEQUENCES TO YOU SHOULD YOU CONFIDE IN US ABOUT YOUR PROBLEM.

Q. WHY IS THAT IMPORTANT?

A. IT'S IMPORTANT BECAUSE IF YOU THREATEN OR CONFRONT - AND BY THREATEN I MEAN HOLD OUT THE POSSIBILITY OF INCARCERATION, THIS DETERS WOMEN FROM SEEKING HELP. AND INDEED THERE IS RESEARCH TO SUPPORT THAT THOSE KINDS OF APPROACHES CREATE EXACTLY THAT. THEY CREATE A FEAR AND THE WOMEN WILL NOT COME BACK IN JUST FOR EVEN PRENATAL CARE, MUCH LESS AVAIL THEMSELVES OF ANY KIND OF TREATMENT PROGRAM.

Q. DOCTOR, IS - IS THE MANNER IN WHICH THAT IS DONE SIGNIFICANT?

A. YES, I BELIEVE THAT IT IS.

[JESSUP 96]

Q. DESCRIBE WHY THAT IS IMPORTANT.

A. IT'S IMPORTANT BECAUSE THIS GROUP OF WOMEN, DRUG AND ALCOHOL DEPENDENT, PREGNANT AND POSTPARTUM WOMEN ARE FEARFUL OF THE CONSEQUENCES THAT THEY MAY FACE. THEY ARE ALSO, I

BELIEVE, CAN BE INTIMIDATED BY STATEMENTS THAT ARE PUNITIVE AND CONFRONTATIVE. AND THEY ARE INTIMIDATED AWAY FROM THE SOURCES OF HELP WHERE THEY NEED, THE EXACT PLACE WHERE THEY NEED TO BE.

Q. AND JUST SO I DON'T LEAVE AN AREA BEFORE I SHOULD, HAVE YOU DESCRIBED FOR US EVERYTHING THAT YOU HAVE AN OPINION WITH RESPECT TO ABOUT HOW IT SHOULD HAVE BEEN DONE?

A. NOT COMPLETELY.

Q. THEN CONTINUE.

A. I BELIEVE THAT THERE HAS TO BE A CONTINUUM OF HELP FROM THE POINT OF WHICH THE PATIENT COMES IN FOR PRENATAL CARE TO THE POINT THAT THEY SUCCESSFULLY COMPLETE A DRUG OR ALCOHOL TREATMENT PROGRAM. AND THAT CONTINUUM COMMENCES WITH OFFERING THEM TREATMENT THAT IS APPROPRIATE FOR THEM THAT ADDRESSES ISSUES OF CHILD CARE AND TRANSPORTATION. THESE ARE NOT EXTRA PERKS THAT, YOU KNOW, WE SHOULD JUST HAND OFF TO THIS POPULATION, THEY'RE ABSOLUTELY CRITICAL PIECES OF THE KIND OF TREATMENT THAT WE OFFER.

Q. WHY? WHY ARE THEY CRITICAL?

A. BECAUSE WE KNOW THAT FOR WOMEN WHO ARE DRUG AND ALCOHOL DEPENDENT, PARTICULARLY IF THEY HAVE CHILDREN, TRANSPORTATION

AND CHILD CARE ARE TWO BARRIERS WHICH PREVENT THEM FROM PARTICIPATING IN A CONSISTENT WAY IN TREATMENT.

Q. WAIT BEFORE YOU ANSWER MY NEXT QUESTION.

DID YOU CONSIDER OR DID YOU REVIEW RECOMMENDATIONS OF MEDICAL GROUPS AND SOCIETIES WITH RESPECT TO THE PROBLEM OF SUBSTANCE ABUSE IN PREGNANCY IN FORMING THE OPINIONS THAT YOU FORMED?

MS. SHOWERS: I OBJECT, YOUR HONOR, ON THE GROUND OF HEARSAY 401, 403, AND LACK OF FOUNDATION.

MR. WHERRY: I WOULD LIKE TO BE HEARD.

THE COURT: WOULD YOU REPEAT THE QUESTION, I LISTENED TO IT BUT - DID SHE REVIEW WHAT? I'M NOT SURE I UNDERSTAND IT.

MR. WHERRY: REPORTS AND RECOMMENDATIONS OF LEADING MEDICAL GROUPS AND ASSOCIATIONS WITH RESPECT TO SUBSTANCE ABUSE IN PREGNANCY IN FORMING THE OPINIONS THAT SHE HAS FORMED.

AND I WOULD LIKE TO CITE ALSTON VERSUS TALLADEGA COUNTY. I THINK THAT THE STANDARDS AND NORMS THAT EXIST ARE VERY APPROPRIATE AND RELEVANT CONSIDERATION.

THE COURT: YOU HAVE LOST ME. THESE REPORTS AND

RECOMMENDATIONS, WHAT ARE THEY?
MR. WHERRY: OF LEADING MEDICAL GROUPS. I'M GOING TO NAME ONE THAT IS NOT ONE, SO I DON'T PREJUDICE ANY, THE AMERICAN MEDICAL ASSOCIATION.

* * *

[JESSUP 115]

ANSWER THAT DURING THE BREAK, BECAUSE I THINK IT WOULD SAVE A LOT OF TIME IF YOU CAN IDENTIFY IT NOW AND NOT HAVE TO IDENTIFY IT ON CROSS-EXAMINATION.
MS. SHOWERS: THANK YOU.
THE COURT: LET'S GIVE HER THE SIX ARTICLES SHE RELIED ON AND LET'S LET MS. JESSUP TELL HER WHERE THEY'RE FOOTNOTED IN HER WRITING, AND IF THEY'RE NOT FOOTNOTED WE MIGHT COME BACK AND ENTERTAIN ANOTHER OBJECTION.
MS. SHOWERS: THANK YOU.
(WHEREUPON, A BREAK WAS TAKEN OFF THE RECORD.)
THE COURT: ALL RIGHT, SIR.
Q. (BY MR. WHERRY, CONTINUING) PROFESSOR JESSUP, DID YOU FORM AN OPINION AS TO WHAT THE NORMS ARE BASED UPON YOUR REVIEW OF THE DOCUMENTATION OF LEADING MEDICAL GROUPS AND ASSOCIATIONS WITH RESPECT TO THE TREATMENT OF SUBSTANCE-ABUSING PREGNANT WOMEN?
A. YES, I HAVE.

Q. AND WHAT IS YOUR OPINION AS TO WHAT THOSE NORMS ARE?
A. BASED ON WHAT SEVERAL OF THESE ORGANIZATIONS HAVE STATED, AND THESE ORGANIZATIONS HAVE TO DO WITH MATERNAL AND CHILD AND INFANT HEALTH, THE COMPONENTS OF AN EFFECTIVE PROGRAM INCLUDE OUTREACH AND CASE FINDING ASSESSMENT, IN DEPTH INTERVIEW AND REFERRAL FOR TREATMENT TO AN APPROPRIATE PROGRAM THAT WOULD BEST SERVE WOMEN AND CHILDREN. THEY DO NOT INCLUDE AND A PROGRAM SHOULD NOT INCLUDE ANYTHING THAT INTENDS TO PUNISH OR

[JESSUP 116]

PROVIDE FOR ARRESTS OR INCARCERATION OR ANY OTHER LEGAL INTERVENTION THAT WOULD POSSIBLY FRIGHTEN WOMEN AWAY AND DETER THEM FROM GETTING PRENATAL CARE AND THE TREATMENT THAT THEY NEED.
Q. DOCTOR, DO YOU HAVE AN OPINION AS TO THE ACCEPTANCE OF THOSE STANDARD OR NORMS?
A. IT'S MY BELIEF -- OH.
MS. SHOWERS: OBJECTION, YOUR HONOR. I OBJECT TO THE QUESTION AS IMPROPER FOUNDATION.
THE COURT: GO AHEAD. WHAT WAS THE QUESTION?
Q. (BY MR. WHERRY, CONTINUING) THE QUESTION WAS WHETHER SHE HAD AN OPINION AS TO THE ACCEPTANCE OF THESE STANDARDS OR

NORMS? WHETHER THEY'RE GENERALLY --
THE COURT: I SUSTAIN THE OBJECTION. I DON'T KNOW THAT THE ACCEPTANCE OF THEM IS RELEVANT. SHE IS HERE EXPRESSING AN OPINION AS AN EXPERT WITNESS. IF SHE RELIES ON THEM THAT'S ONE THING, BUT WHETHER OTHER PEOPLE RELY ON THEM OR NOT, I DON'T KNOW THAT THAT IS RELEVANT. AND SO I SUSTAIN THE OBJECTION.
Q. (BY MR. WHERRY, CONTINUING) COMPARE FOR US, PLEASE, PROFESSOR, THOSE STANDARDS AND NORMS THAT YOU JUST PROVIDED TO US WITH THE INTERAGENCY POLICY?
THE COURT: LET ME BACK UP JUST A MINUTE. I APOLOGIZE FOR INTERRUPTING YOU. WHEN YOU ASK ABOUT THE ACCEPTANCE OF THESE NORMS BY OTHER PERSONS, I ASSUMED THAT YOU

[JESSUP 117]

WERE TALKING ABOUT PEOPLE OTHER THAN ANY OF THE DEFENDANTS?
MR. WHERRY: YES, SIR. YES.
THE COURT: BECAUSE IF THE DEFENDANTS HAVE ACCEPTED THESE NORMS IN THE PAST, THEN IT MAY BE RELEVANT. OTHERWISE I SUSTAIN THE OBJECTION.
Q. (BY MR. WHERRY, CONTINUING) COMPARE FOR US, PLEASE, THE STANDARDS AND NORMS THAT YOU SET FORTH WITH THE INTERAGENCY

POLICY AS YOU UNDERSTAND IT BASED UPON THE THINGS THAT YOU CONSIDERED IN FORMING YOUR OPINIONS?

A. WELL, THESE STANDARDS AND NORMS, FIRST, ARE ALL PUBLISHED AND DELIBERATED UPON BY THE AMERICAN ACADEMY OF PEDIATRICIANS; THE AMERICAN ASSOCIATION OF PUBLIC HEALTH; THE AMERICAN NURSE'S ASSOCIATION; THE AMERICAN MEDICAL ASSOCIATION; AMERICAN SOCIETY ON OBSTETRICIANS AND MEDICINE; AND THE AMERICAN PERINATAL ASSOCIATION AND THE MARCH OF DIMES.

AND THE COMPARISON IS THAT IN THOSE GROUPS STANDARDS WHICH HAVE BEEN EMBRACED BY THE FEDERAL GUIDELINES AND RECOMMENDATIONS FOR TREATMENT, I MIGHT ADD, IN THOSE STANDARDS IT SAYS SPECIFICALLY THAT ANYTHING THAT IS CONSIDERED A LEGAL INTERVENTION SUCH AS AN ARREST OR INCARCERATION OR SINGLING OUT ANY GROUP FOR DRUG TESTING IS VERY PROBLEMATIC IN TERMS OF GETTING TO THE GOAL THAT YOU WANT, WHICH IS HEALTHY BABIES AND HEALTHY WOMEN.

AND BY CONTRAST I WOULD SAY THAT THE POLICY, THE INTERAGENCY POLICY THAT WAS ADAPTED AND IMPLEMENTED AT MUSC

[JESSUP 118]

CERTAINLY HAS THOSE ELEMENTS IN IT.

Q. WHAT ELEMENTS?

A. THE ELEMENTS OF ARRESTS AND INCARCERATION AS WELL AS BRINGING IN LEGAL AUTHORITIES. NOT ONLY THAT, BUT INFORMING THE PATIENTS OF THAT, WHICH COMES ACROSS AS ESSENTIALLY A LEGAL THREAT IF THEY DO NOT COMPLY WITH PRENATAL CARE AND SUBSTANCE ABUSE.

Q. I THINK YOU JUST MADE A COMMENT ON FEDERAL STANDARDS.

A. YES.

Q. WHERE DO THEY COME FROM?

A. THE CENTER FOR SUBSTANCE ABUSE TREATMENT IS THE BODY WITHIN THE FEDERAL GOVERNMENT THAT SETS STANDARDS FOR POPULATIONS OF PEOPLE WHETHER THEY ARE -

MS. SHOWERS: YOUR HONOR, I OBJECT AS BEYOND THE SCOPE. I DON'T BELIEVE THAT THAT WAS ONE OF THE LISTED ASSOCIATIONS, AND 703 HAS NOT BEEN ESTABLISHED.

THE COURT: WAS IT?

MR. WHERRY: NO, IT WAS NOT. AND I'M MOVING ON TO A NEW AREA.

THE COURT: OKAY.

MR. WHERRY: I MEAN, I DON'T WANT TO MISLEAD YOU. THE QUESTION WAS IN A WHOLE NEW AREA. I WASN'T DEALING WITH THE NORMS ANYMORE.

THE COURT: WELL, LET'S ASK HER ANOTHER QUESTION THEN.

* * *

[JESSUP 125]

DID NOT ATTEMPT TO UNDERTAKE SUBSTANCE ABUSE TREATMENT, CORRECT?

A. YES, THAT'S CORRECT.

Q. AND YOU HAVE NO KNOWLEDGE OF THE ADEQUACY OF THE SUBSTANCE ABUSE TREATMENT AVAILABLE IN CHARLESTON IN 1989, DO YOU, MS. JESSUP?

A. I HAVE AN IMPRESSION OF IT, YES.

Q. BUT YOU HAVE NO PERSONAL KNOWLEDGE OF THAT, DO YOU?

A. CAN YOU DEFINE PERSONAL KNOWLEDGE?

Q. YOU PERSONALLY HAVE NOT DONE ANY STUDIES OR ANY PERSONAL INVESTIGATION TO DETERMINE THE ADEQUACY OF SUBSTANCE ABUSE TREATMENT FACILITIES IN CHARLESTON, SOUTH CAROLINA, IN 1989, CORRECT?

A. I HAVE NOT BEEN TO THE FACILITY AND I SIC NOT INTERVIEWED ANYONE HERE, BUT I HAVE AN IMPRESSION AS TO WHAT THOSE SERVICES WERE AT THAT TIME.

Q. BUT NOT FROM FIRSTHAND KNOWLEDGE, CORRECT?

A. IF THAT BY - IF YOU MEAN BY THAT RESEARCH THAT I CONDUCTED MYSELF OR BY VISITING IT, NO, THAT IS CORRECT.

Q. THANK YOU. YOU HAVE SEEN THE MARCH OF DIMES VIDEO SMOKING, DRINKING AND DRUGS; IS THAT RIGHT?
A. YES, I HAVE.
Q. AND YOU AGREE WITH ME THAT THAT VIDEO IS BENEFICIAL FOR PREGNANT WOMEN TO VIEW?
A. IF IT IS DONE IN THE CONTEXT OF COUNSELING AND REFERRAL

[JESSUP 126]

FOR TREATMENT I WOULD SAY YES, IT IS.
Q. SO, YES, IT IS BENEFICIAL?
A. YES, I WOULD SAY IT IS.
Q. YOU YOURSELF DO NOT KNOW WHO WAS INVOLVED IN FORMULATING THE POLICY AT MUSC?
A. I UNDERSTAND THAT IT WAS A COMBINATION OF INDIVIDUALS INSIDE THE MEDICAL UNIVERSITY AND OUTSIDE, AND ALSO I HEARD TESTIMONY TO ANSWER SOME OF THAT.
Q. AND YOU ARE NOT AWARE THAT THE VAST MAJORITY OF WOMEN WHO CAME UNDER THE PURVIEW OF THE INTERAGENCY POLICY WERE NEVER ARRESTED, WERE YOU?
A. I AM AWARE THAT A SIGNIFICANT NUMBER OF THEM WERE. AND SINCE I DON'T KNOW WHAT THE TOTAL NUMBER IS, WHO CAME UNDER THE POLICY -
Q. SO OUT OF 253 WOMEN WHO TESTED POSITIVE, YOU WERE NOT

AWARE THAT ONLY 28 OR 30 WOMEN WERE ARRESTED, WERE YOU?
A. I'M NOT FAMILIAR WITH THOSE NUMBERS BEING ACCURATE OR TRUE.
Q IN ASSESSING THE EFFECTIVENESS OF THE POLICY, DID YOU REVIEW THE SUBSTANCE ABUSE RECORD OF THE PLAINTIFFS'?
A. NO, I DID NOT.
Q. SO, YOU DID NOT CONSIDER THEIR SUCCESS AT SUBSTANCE ABUSE TREATMENT WHEN YOU EVALUATED THE EFFECTIVENESS OF THIS POLICY, DID YOU?
A. I LOOKED AT THE EFFECTIVENESS OF THE IMMEDIATE

[JESSUP 127]

INTERVENTION THAT WAS OCCURRING AT THE TIME THAT THE WOMAN WAS IN THE HOSPITAL AND TESTED POSITIVE.
Q. MS. JESSUP, YOU DID NOT CONSIDER THE SUCCESS OF THE PLAINTIFFS' IN EVALUATING THE EFFECTIVENESS OF THIS POLICY, DID YOU?
A. I WAS NOT LOOKING AT THAT PART OF IT.
Q. AND YOU AGREE WITH ME THAT SHIRLEY BROWN'S OBJECTIVES IN CARRYING OUT THIS POLICY WAS TO COMPLY WITH THE POLICY AS THE HOSPITAL HAD SET DOWN, CORRECT?
A. REPEAT THAT.

MR. WHERRY: OBJECTION. COMPETENCE. BEYOND THE SCOPE. SHE CAN'T POSSIBLE SIC TELL THAT.

THE COURT: GO AHEAD.

MS. SHOWERS: SHE HAS EVALUATED THE RECORD.

THE COURT: SHE ASKED YOU TO REPEAT THE QUESTION.

MS. SHOWERS: SURE.

Q. (BY MS. SHOWERS, CONTINUING) YOU AGREE WITH ME THAT SHIRLEY BROWN'S OBJECTIVES WERE TO COMPLY WITH THE INTERAGENCY POLICY AS ESTABLISHED BY THE HOSPITAL, CORRECT?

MR. WHERRY: I OBJECT.

THE COURT: I OVERRULE THE OBJECTION.

A. COULD YOU REPEAT IT AGAIN, PLEASE.

Q. (BY MS. SHOWERS, CONTINUING) SURE.

YOU AGREE WITH ME THAT SHIRLEY BROWN'S OBJECTIVES WERE TO COMPLY WITH THE INTERAGENCY POLICY AS ESTABLISHED BY

[JESSUP 128]

THE HOSPITAL?

A. I DON'T KNOW WHAT HER OBJECTIVES WERE.

Q. COULD YOU TURN TO PAGE 28, PLEASE. AT LINE 8. CAN YOU TELL ME WHAT YOU UNDERSTOOD HER OBJECTIVES TO BE AND HER

ROLE.

AND YOUR ANSWER WAS: I UNDERSTOOD HER OBJECTIVES TO BE TO COMPLY WITH THE INTERAGENCY POLICY.

WAS THAT YOUR ANSWER?

A. YES, THAT WAS MY ANSWER.

Q. THANK YOU. YOU HAVE NEVER SEEN SHIRLEY BROWN INTERACT WITH A PATIENT AT MUSC, HAVE YOU?

A. NO, I HAVE NOT.

Q. AND SHIRLEY BROWN'S PRIMARY JOB RESPONSIBILITY WAS NOT TO CARRY OUT THIS POLICY, SHE HAD MANY, MANY OTHER DUTIES, DIDN'T SHE?

MR. WHERRY: OBJECTION, SCOPE. THIS WITNESS HAS NEVER MET SHIRLEY BROWN.

THE COURT: I'LL PERMIT IT.

A. COULD YOU REPEAT THE QUESTION, PLEASE.

Q. SURE. YOU AGREE WITH ME THAT MS. BROWN'S PRIMARY JOB RESPONSIBILITY WAS NOT TO CARRY OUT THIS POLICY, SHE HAD MANY, MANY OTHER DUTIES AND RESPONSIBILITIES AT THE MEDICAL UNIVERSITY?

A. I KNOW THAT SHE HAD MANY OTHER DUTIES, YES.

Q. AND SHE DID NOT UNDERTAKE TO PROVIDE SUBSTANCE ABUSE

TREATMENT TO THESE WOMEN, CORRECT?
A. I WOULD SAY THAT SHE DID NOT UNDERTAKE TO DO THAT, YES.
Q. AND YOU HAVE NOT REVIEWED THE SOUTH CAROLINA CHILD ABUSE REPORTING STATUTE, HAVE YOU, MS. JESSUP?
A. I AM AWARE, I BELIEVE, OF WHAT IT SAYS, BUT I HAVEN'T READ IT IN ITS TOTALITY.
Q. AND YOU'RE LICENSED IN CALIFORNIA, NOT SOUTH CAROLINA?
A. THAT IS CORRECT.
Q. AND YOU HAVE NEVER WORKED AS A NURSE IN A STATE THAT HAS A LAW WHICH REQUIRES REPORTING OF A POSITIVE URINE DRUG SCREEN OF A PREGNANT WOMEN AS SUSPECTED CHILD ABUSE AND NEGLECT, HAVE YOU?
A. ACTUALLY, THE CALIFORNIA LAW RECENTLY CHANGED AND DURING A GOOD PART OF MY CLINICAL PRACTICE THAT WAS A FEATURE OF THE LAW THAT WAS CHANGED IN 1991.
Q. SO NOW IN CALIFORNIA YOU MUST REPORT A POSITIVE URINE DRUG SCREEN OF A PREGNANT WOMAN?
A. NO, THE LAW STATES THAT YOU WILL NOT REPORT TO CHILD WELFARE SERVICES A SUBSTANCE-EXPOSED BABY ON THE BASIS OF ONE POSITIVE TOXICOLOGY DRUG SCREEN ALONE.
Q. MY QUESTION WAS SIMPLY: YOU HAVE NEVER WORKED AS A NURSE

IN A STATE WHICH HAS A LAW WHICH REQUIRES A REPORTING OF A POSITIVE URINE DRUG SCREEN OF PREGNANT WOMEN AS SUSPECTED CHILD ABUSE AND NEGLECT?

[JESSUP 130]

A. OF A PREGNANT WOMAN?
Q YES.
NO, I HAVE NOT.
MS. SHOWERS: COULD I HAVE A MOMENT, YOUR HONOR.
MS. SHOWERS: NOTHING FURTHER.
MR. WHERRY: JUST TWO QUESTIONS ON REDIRECT.

REDIRECT EXAMINATION

BY MR. WHERRY:
Q. YOU INDICATED THAT YOU HAD NOT WORKED ON THE OB SERVICE SINCE '81, I THINK, IN YOUR DEPOSITION. I THINK YOU WANTED TO ADD SOMETHING TO THAT?
A. YES, I DID. THANK YOU.
Q. WHAT WAS THAT?
A. I HAVE NOT WORKED IN LABOR AND DELIVERY SINCE THAT PERIOD OF TIME, BUT WITH THE POSSIBLE EXCEPTION OF ABOUT TWO YEARS I HAVE CONSISTENTLY CONSULTED ON CASES OF PREGNANT WOMEN COMING INTO LABOR AND DELIVERY BECAUSE I HAVE ALWAYS BEEN AFFILIATED WITH THE MEDICAL UNIVERSITY THROUGH THE NURSING SCHOOL. AND

ALSO RECENTLY THIS FALL THAT DUTY HAS BEEN ADDED TO MY ROSTER FOR THE FAMILY NURSE PRACTITIONER PROGRAM AND THE WOMEN'S HEALTH, PRIMARY CARE NURSE PRACTITIONER PROGRAM. I'M NOW DOING MORE PATIENT HEALTH CARE CONSULTATIONS.

Q. YOU INDICATED THAT ALTHOUGH YOU DID NOT PERSONALLY GO AND SEE THE AVAILABLE SUBSTANCE ABUSE TREATMENT IN CHARLESTON DURING THE INTERAGENCY POLICY PERIOD, THAT YOU HAD AN

* * *

[JESSUP 134]

PUBLISHED?

A. THAT ARTICLE WAS PUBLISHED IN THE JOURNAL OF THE SOUTH CAROLINA MEDICAL ASSOCIATION. AND IT WAS ENTITLED COCAINE IN PREGNANCY, CONFRONTING THE PROBLEM, I BELIEVE WAS THE TITLE. AND IT WAS A DESCRIPTION OF THE INTERAGENCY POLICY AND WHAT HAD BEEN ACCOMPLISHED IN THE, I BELIEVE TWO-AND-A-HALF-YEAR BEGINNING PERIOD OF THE POLICY.

Q. WHAT WAS THE IMPRESSION THAT YOU FORMED?

THE COURT: ARE YOU FAMILIAR WITH THOSE DOCUMENTS?

MS. SHOWERS: WE'RE LOOKING FOR THEM, BUT, YES, SIR.

THE COURT: DO THEY EXIST?

MS. SHOWERS: YES, SIR.

THE COURT: DID THEY DEAL WITH THE SUBJECT MATTER THAT SHE STATED?
MS. SHOWERS: THAT'S WHAT I'M CHECKING FOR.
THE COURT: OKAY, YOU MAY PROCEED.
Q. (BY MR. WHERRY, CONTINUING) TELL US WHAT THE IMPRESSION IS OR THE IMPRESSION THAT YOU HAD CONCERNING SUBSTANCE ABUSE TREATMENT AVAILABILITY IN THE CHARLESTON AREA IN THE TIME PERIOD IN QUESTION?
A. WELL, BECAUSE THERE WAS ONE PROGRAM THAT WAS REFERRED TO, I FELT THAT WAS NOT GOING TO GIVE THE WOMEN THE FULL VARIETY OF SERVICES THAT THEY NEEDED. AND ADDITIONALLY BECAUSE THERE WERE -- THERE WAS NOT CHILD CARE.
THE COURT: THE ANSWER IS NOT IN RESPONSE TO THE

[JESSUP 135]

QUESTION.
THE WITNESS: WOULD YOU REPEAT THE QUESTION.
Q. (BY MR. WHERRY, CONTINUING) WHAT WAS THE IMPRESSION THAT YOU HAD OF THE ADEQUACY OF HEALTH CARE -- OF SUBSTANCE ABUSE TREATMENT IN CHARLESTON IN THE TIME PERIOD IN QUESTION?
A. I FELT THAT IT WAS INADEQUATE.
MR. WHERRY: I HAVE NO FURTHER QUESTIONS.
THE COURT: ANY RECROSS?

MS. SHOWERS: YES, SIR.

RECROSS EXAMINATION

BY MS. SHOWERS:

Q THE BASIS OF THAT OPINION IS THAT YOU DID NOT BASE THAT UPON ANY OF THE TESTIMONY OF THE SUBSTANCE ABUSE PROFESSIONALS THAT HAVE TESTIFIED IN THIS CASE HAVE YOU, MS. JESSUP?

A. NO, I HAVE NOT.

Q. AND YOUR PRIMARY JOB FOCUS IS EDUCATION ON SUBSTANCE ABUSE, IT'S NOT OBSTETRICS, CORRECT?

A. I WOULD SAY THAT IT'S BOTH.

Q BUT IN TERMS OF WORKING IN A PRIMARY OBSTETRICAL UNIT, YOU DON'T WORK IN A PRIMARY OBSTETRICAL UNIT, CORRECT?

A. I CONSULT ON PATIENTS IN A PRIMARY OBSTETRIC UNIT, I'M NOT A STAFF NURSE IN A PRIMARY OBSTETRIC UNIT, THAT'S RIGHT.

Q. YOU PRIMARILY EDUCATE ON SUBSTANCE ABUSE TREATMENT, CORRECT?

A. I SEE PATIENTS AND EVALUATE THEM WITH STUDENTS AND THEIR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF FRANKLIN JOHNSON

[JOHNSON 719]

AFFILIATE FOR THE ANDERSON AREA MEDICAL CENTER. PRIOR TO THAT I EXECUTIVE DIRECTOR FOR THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION FOR A PERIOD BEGINNING IN 1980 THROUGH APRIL OF '82. EXCUSE ME '92.

Q. AND THAT'S HERE IN CHARLESTON, THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION?

A. CORRECT.

Q. AND CAN YOU TELL THE JURY WHERE YOU DID YOUR TRAINING OR WHERE YOU WERE EDUCATED?

A. I HAVE AN UNDERGRADUATE DEGREE AT THE UNIVERSITY OF SOUTH CAROLINA. AND A MASTER'S DEGREE FROM GOLDEN GATE UNIVERSITY OUT OF SAN FRANCISCO.

Q. MR. JOHNSON, AS EXECUTIVE DIRECTOR OF CHARLESTON COUNTY SUBSTANCE ABUSE, DID YOU BECOME INVOLVED WITH THE INTERAGENCY POLICY IN 1989?

A. YES.

Q. CAN YOU TELL THE JURY WHAT YOUR INVOLVEMENT WAS?

A. I WAS INVITED WITH I THINK OTHERS IN THE COMMUNITY. AS

THE DIRECTOR OF THE COMMISSION, I WAS INVITED TO A MEETING AT THE MEDICAL UNIVERSITY WHERE THE POLICY WAS EXPLAINED AND PROPOSED. AND THOSE OF US WHO HAD AGENCIES LIKE THE SUBSTANCE ABUSE COMMISSION WERE ASKED IF WE WOULD BE WILLING TO PARTICIPATE WITH THAT.

Q. AND WERE YOU WILLING TO PARTICIPATE WITH THE PLAN, MR. JOHNSON?

[JOHNSON 720]

A. YES.

Q. AND AT THAT MEETING DID YOU EXPRESS ANY OPINIONS ABOUT THE AVAILABILITY OF SUBSTANCE ABUSE TREATMENT?

A. I THINK THAT I OFFERED THE AGENCY, TO THE EXTENT THAT OUR RESOURCES WERE THERE, WE WERE CERTAINLY AVAILABLE. WE WERE AVAILABLE TO THE COMMUNITY. THIS PROJECT AND OTHER PATIENTS AT THE MEDICAL UNIVERSITY CERTAINLY HAD ACCESS TO THE COMMISSION. SO, YES, WE WERE WILLING TO SUPPORT THAT.

Q. FROM YOUR ATTENDANCE AT THE MEETING AT THE MEDICAL UNIVERSITY AND YOUR INVOLVEMENT IN THE INTERAGENCY POLICY, WHAT WAS YOUR IMPRESSION OF THE GOAL OF THE POLICY?

A. THE WAY THAT - MY OVERALL RECOLLECTION OF THAT WAS THAT

THE EFFORTS PRIOR - PRIOR EFFORTS TO ENCOURAGE WOMEN TO SEEK HELP EARLIER, AND IN TERMS OF DEALING WITH THEIR ADDICTION HAVE - HAD NOT BEEN SUCCESSFUL TO THE - AT LEAST TO THE EXTENT THAT PEOPLE WERE HOPING. AND THIS AS A LAST RESORT WAS OFFERED AS A METHOD TO INTERVENE IN THE ADDICTION PROCESS AND GET SOMEONE'S ATTENTION AT A POINT WHERE MAYBE USING THAT AS A LEVERAGE, USING THE ISSUE OF THAT INTERVENTION AS LEVERAGE TO MAKE THEM SEEK TREATMENT THAT THEY WOULD NOT HAVE SOUGHT OTHERWISE.

THE PROCESS OF ADDICTION IS SUCH THAT DENIAL IS ONE OF THE KEY FEATURES, ONE OF THE KEY SYMPTOMS. AND A PERSON LEFT TO THEIR OWN RESOURCES, AS MANY OF US MIGHT HAVE WITNESSED, RARELY ADMIT ADDICTION. THEY WILL SACRIFICE A LOT

[JOHNSON 721]

OF THINGS PRIOR TO ADMITTING THAT. SO THIS WAS THE WAY TO INTERVENE, HOPEFULLY GET SOME WOMEN SOME HELP IN THAT ADDICTION PROCESS BEFORE IT CAUSED EVEN GREATER HARM TO THEM AND OTHERS.

Q. YOU MENTIONED LEVERAGING. COULD YOU EXPLAIN WHAT YOU MEANT BY LEVERAGING TO THE JURY?

A. AGAIN, IN THE EXPERIENCE THAT I HAVE HAD, AND PRIOR TO BEING AT THE CHARLESTON COMMISSION, I HAD WORKED IN THE ADDICTION FIELD AS AN - IN AN ADMINISTRATIVE CAPACITY FOR A NUMBER OF YEARS PRIOR TO THAT. IT'S NOT COMMON, I WON'T SAY IT NEVER HAPPENS, BUT IT'S NOT COMMON FOR SOMEONE ON THEIR OWN PERFECT FREEWILL TO COME IN AND SAY I HAVE AN ADDICTION AND I NEED SOME HELP. USUALLY IT'S A FAMILY MEMBER, A PHYSICIAN OR A JUDGE OR AN EMPLOYER. VERY FREQUENTLY AN EMPLOYER. A PERSON WILL HOLD THE JOB LONGER THAN THEY WILL HOLD ONTO A FAMILY AND A HOUSE.

SO BY INTERVENING INTO THAT, BY SAYING TO SOMEONE EITHER YOU GET - EITHER YOU ADDRESS THIS ADDICTION, EITHER YOU GET SOME HELP OR YOUR JOB IS AT JEOPARDY, EITHER YOU GET SOME HELP OR THE MARRIAGE IS OVER, OR YOU GET SOME HELP OR YOUR HEALTH IS GOING TO SUFFER OR YOU GO TO JAIL, THOSE ARE INTERVENING TECHNIQUES THAT SOMETIMES IT TAKES TO GETS SOMEBODY'S ATTENTION, OTHERWISE THEY WILL NOT LOOK AT IT CLOSELY ENOUGH THEMSELVES TO BREAK THROUGH THAT DENIAL AND UNDERSTAND THE LEVEL OF THAT PROBLEM.

Q. AS DIRECTOR AT CHARLESTON COUNTY SUBSTANCE ABUSE, DID YOU EXPRESS ANY OBJECTION AT THE MEETINGS AS TO COOPERATION WITH THE POLICY?
A. NO.
Q. AND CAN YOU DESCRIBE THE QUALIFICATIONS OF YOUR STAFF AT THE TIME AT CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION?
A. THE STAFF WAS AS QUALIFIED AS WE WERE ABLE TO BE AND REQUIRED TO BE. THE COUNSELORS WERE CERTIFIED ADDICTION COUNSELORS BY THE STATE ALCOHOL AND DRUG COMMISSION. MANY OF THEM WERE - POSSESSED A LOT OF EXPERIENCE IN THE FIELD. HAD BEEN IN THE FIELD TEN OR MORE YEARS. ALL OF THEM, TO MY KNOWLEDGE AND OBSERVATIONS, HAD A COMPASSION TOWARD THE ADDICT, TOWARDS THE ALCOHOLIC. PERSONS WORKING IN THAT FIELD HAVE A HARD TIME STAYING IN THERE A LONG TIME JUST FOR THE MONEY. YOU DON'T DO IT FOR THE MONEY, YOU DO IT BECAUSE YOU CARE ABOUT THE PEOPLE SEEKING THE TREATMENT. SO ALL OF THEM WERE QUALIFIED IN TERMS OF THEIR CERTIFICATIONS. AND EVEN MORE IMPORTANTLY ALL OF THEY WERE QUALIFIED IN TERMS OF THEIR COMPASSION FOR THE WORK.
Q. MR. JOHNSON, WHEN YOU WERE AT THE MEETINGS AT THE MEDICAL

UNIVERSITY ABOUT THE POLICY, DID YOU EVER HEAR ANY RACIALLY DEROGATORY COMMENTS MADE?
A. NO.
MS. SHOWERS: ONE MOMENT, PLEASE. I HAVE NOTHING FURTHER THANK YOU.

[JOHNSON 723]

THE COURT: OKAY.
CROSS-EXAMINATION
BY MS. PALTROW:
Q. MR. JOHNSON, YOU SAID THAT YOU HAD A MASTER'S DEGREE. CAN YOU TELL US WHAT THAT IS IN?
A. PUBLIC ADMINISTRATION.
Q. SO YOU DON'T HAVE ANY DEGREES IN SUBSTANCE ABUSE COUNSELING DO YOU?
A. THAT'S CORRECT.
Q. AND YOU HAVE NO PARTICULAR TRAINING IN SUBSTANCE ABUSE COUNSELING, DO YOU?
A. THAT'S CORRECT.
Q. AND YOU HAVE DONE NO RESEARCH ON SUBSTANCE ABUSE COUNSELING, HAVE YOU?
A. THAT'S CORRECT.
Q. AND YOU HAVE DONE NO RESEARCH ON SUBSTANCE ABUSE REFERRALS, HAVE YOU?
A. IN THE SENSE OF THE RESEARCH THAT YOU'RE TALKING ABOUT, THAT'S CORRECT.
Q. AND -
A. IF YOU MEAN WRITTEN AND DOCUMENTED SCIENTIFIC OTHER THAN

JUST OBSERVATIONS THROUGH THE YEARS, THAT'S CORRECT.

Q. JUST FROM YOUR OBSERVATIONS AND YOUR WORK, WHAT YOU THINK, RIGHT?

A. RIGHT. TWENTY YEARS IN WORKING AROUND OTHERS AND

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF THERESA JOSEPH

[JOSEPH 16]

Q. TWO DAYS, AGAIN?
A. YES
Q. DO YOU REMEMBER THE MONTHS IN 1992?
A. NO.
Q. HOW ABOUT IN 1991?
A. NO.
Q HAVE YOU EVER BEEN CHARGED, ARRESTED OR CONVICTED OF ANY OTHER CRIMES?
A. NO, I DON'T RECALL. NO.
MR. OBERDIER: CAN I JUST CLARIFY? WHAT WAS YOUR FINAL ANSWER? "NO", OR "I DON'T RECALL"?
A. OH, YES. YES.
MR. OBERDIER: OR "YES"?
A. YES.
Q. WHEN WAS THAT?
A. 1991.
Q. OKAY. WHAT WAS THE CHARGE?
A. DISTRIBUTION OF COCAINE TO A MINOR.
Q. WERE YOUR CONVICTED?
A. YES.
Q WHAT WAS YOUR SENTENCE?
A. NO, I WASN'T, I DON'T THINK. NO.
Q. NO CONVICTION?

A. NO.

[JOSEPH 17]

Q. DID YOU ENTER INTO PRETRIAL INTERVENTION?
A. NO.
Q. YOU HAD NO CONVICTION AND YOU DIDN'T ENTER INTO PRETRIAL INTERVENTION? WHAT HAPPENED TO THAT CHARGE?
A. DROPPED.
Q. THE CHARGE WAS DROPPED?
A. YES.
Q. DID YOU HAVE TO DO ANYTHING IN ORDER TO GET THE CHARGE DROPPED?
A. YES.
Q. WHAT WAS THAT?
A. I HAD TO ENTER INTO A DRUG TREATMENT PROGRAM
Q. AND DID YOU DO THAT?
A. YES.
Q. AND YOU WERE SUCCESSFUL WITH IT?
MR. OBERDIER: OBJECTION.
A. YES.
Q. WHERE DID YOU ENTER INTO THE DRUG TREATMENT?
A. CHARLESTON COUNTY SUBSTANCE ABUSE.
Q. AND WHEN DID YOU ENTER INTO TREATMENT?
A. '92.
Q. AND WHO WAS YOUR COUNSELOR?
A. ED JOHNSON.
Q. HOW LONG DID YOU SEE MR. JOHNSON?
A. SINCE '92.

[JOSEPH 18]

Q. DO YOU STILL CONTINUE TO SEE HIM?
A. YES
Q. HOW FREQUENTLY?
A. ONCE A WEEK.
Q. IS THIS PART OF THE METHADONE PROGRAM?
A. YES.
Q. AND HOW LONG DOES THAT LAST? THE TREATMENT PROGRAM?
A. I DON'T KNOW.
Q. OKAY. DO YOU GO TO ANY OTHER SUPPORT GROUPS, OTHER THAN THE CHARLESTON COUNTY SUBSTANCE ABUSE PROGRAM?
A. NO.
Q. HAS THE CHARLESTON COUNTY SUBSTANCE ABUSE PROGRAM HELPED YOU?
MR. OBERDIER: OBJECTION.
A. YES.
Q. HAS THE TREATMENT BEEN EFFECTIVE IN HELPING YOU TO GET OFF DRUGS?
MR. OBERDIER: OBJECTION.
A. WELL, WITH THAT AND ME WANTING TO.
Q. OKAY. BUT THEY HAVE HELPED YOU?
A. SOMEWHAT.
Q. SOMEWHAT? CAN YOU EXPLAIN TO ME WHAT YOU MEAN BY "SOMEWHAT"?
A. I MOSTLY DID IT MYSELF, YOU KNOW; BOTH, THEM AND

[JOSEPH 19]

ME.
Q. COULD YOU HAVE DONE IT WITHOUT THEM?
MR. OBERDIER: OBJECTION.
A. YES.
Q. DID YOU LIKE THE TREATMENT?
A. NO.
Q. IF YOU COULD HAVE DONE IT, GOTTEN OFF DRUGS WITHOUT THE CHARLESTON SUBSTANCE ABUSE PROGRAM, WHY DIDN'T YOU DO IT PRIOR TO 1992?
MR. OBERDIER: OBJECTION.
A. CAN I EXPLAIN?
Q. SURE.
A WELL, AT THAT TIME, YOU - KNOW, I NEEDED, YOU KNOW, SOME FAMILY SUPPORT AND, YOU KNOW, I KNEW THAT THAT PROBABLY WOULD HAVE HELPED, YOU KNOW, DO IT AND, YOU KNOW, I TRIED TO, YOU KNOW, SEEK THAT SUPPORT AND, YOU KNOW, THEY JUST TURNED ME AWAY. YOU KNOW, AT TIMES WHEN I REALLY WANTED TO GET OFF AND, YOU KNOW, I WANTED TO BE WITH FAMILY, WITH MY SISTER AND ALL, AND I TRIED CALLING HER AND EXPLAINING THAT I WAS ON THE STREET, I WAS ON DRUGS AND ALL AND I WANTED TO BE WITH THEM, YOU KNOW, AND I KNEW THEY COULD HAVE HELPED ME BUT, YOU KNOW, THEY JUST WOULDN'T LET ME - YOU KNOW, THEY WOULDN'T HELP. THEY WOULDN'T OFFER ANY HELP AND THAT'S WHERE I WANTED TO BE.

Q. SO YOU WANTED YOUR FAMILY TO HELP YOU?

[JOSEPH 20]

A YES.
Q. BUT THEY WEREN'T ABLE TO HELP YOU?
A. NO.
Q. AND HAVE THEY BEEN ABLE TO HELP YOU SINCE 1992?
A. YES; SOMEWHAT, YES.
Q. HAS THAT BEEN A FACTOR IN YOUR SUCCESSFUL TREATMENT?
A. IT'S BEEN SOME HELP.
Q. AND WOULD YOU SAY CHARLESTON COUNTY SUBSTANCE ABUSE WAS A FACTOR IN YOUR GETTING SUCCESSFUL TREATMENT?
A. IT WAS SOME HELP, TOO, ALONG WITH ME AND MY FAMILY.
Q. OKAY. HOW LONG HAVE YOU BEEN USING DRUGS, THERESA?
A. THIS TIME?
Q. NO, FROM THE BEGINNING?
A. THE FIRST TIME I USED THEM FOR ABOUT TWO YEARS BEFORE I CAME TO CHARLESTON.
Q. THAT WOULD BE 1979?
A. YES.
Q. HOW OLD WERE YOU IN 1979? TWENTY-ONE? IS THAT CORRECT?
A. YES. OKAY, YES. YES.
Q. SO YOU WERE TWENTY-ONE YEARS OLD WHEN YOU FIRST

USED DRUGS? IS THAT CORRECT?

* * *

[JOSEPH 35]

A. YES.
Q. AND DID THAT CONTINUE UNTIL 1992?
A. YES.
Q. DURING THAT TIME PERIOD DID YOU TAKE ANY OTHER DRUGS?

MR. OBERDIER: I'M SORRY. IS THAT THE PERIOD FROM '89 TO '92?

MS. SHOWERS: YES.

A. I THINK I WANT A BREAK FOR A LITTLE WHILE.

MR. OBERDIER: DO YOU WANT TO GIVE HER AN ANSWER TO THE LAST QUESTION?

Q. JUST ANSWER THIS QUESTION AND THEN WE WILL TAKE A BREAK?
A. OKAY. CAN YOU REPEAT IT?
Q. DID YOU TAKE ANY OTHER DRUGS BETWEEN 1989 AND 1992?
A. BESIDES ...?
Q. THE COCAINE AND THE HEROIN?
A. NO. NO.

MR. OBERDIER: OKAY, LET'S TAKE A BREAK.

(THE DEPOSITION RECESSED AT 3:50 O'CLOCK, P. M. AND RECONVENED AT 4:00 O'CLOCK, P. M.)

Q. OKAY, THERESA, YOU TESTIFIED THAT – AND PLEASE CORRECT ME IF I'M WRONG. I'M JUST TRYING TO GET US BACK

TO WHERE WE WERE – BETWEEN 1989 AND 1992 YOU WERE USING A

[JOSEPH 36]

MIXTURE OF COCAINE AND HEROINE AND YOU WERE USING TWO BAGS OF EACH PER DAY, TWENTY DOLLARS' WORTH OF COCAINE AND TWENTY-FIVE DOLLARS' WORTH OF HEROINE TWICE A DAY? IS THAT CORRECT?

A. YES.

Q. AND HOW DID YOU USE THAT?

A. INTRAVENOUSLY.

Q. INTRAVENOUSLY?

A. YES.

Q. DOES THE MIXTURE EFFECT THE POTENCY OF THE DRUGS? I MEAN, WHY DO YOU MIX THE TWO?

A. WELL, IN A WAY, IT WAS A FEELING LIKE, YOU KNOW, LIKE THE WAY – THE PILLS I WAS TAKING, YOU KNOW, IT WAS LIKE A DOWN HEAD AND THEN THE COCAINE JUST MADE IT, YOU KNOW, LIKE UP HEAD. IT MADE IT KIND OF LEVEL, YOU KNOW.

Q. A SORT OF A MELLOW IN BETWEEN?

A. YES, RIGHT.

Q. OKAY. HOW LONG DOES THAT LAST FOR, LET'S SAY THE TWENTY COCAINE AND THE TWENTY-FIVE OF HEROIN? HOW LONG DO THE EFFECTS LAST?

A. I DON'T KNOW. IT DEPENDS.

Q. JUST BALL PARK? I MEAN, IF IT WOULD VARY? AN

HOUR, TWO HOURS, THREE HOURS?
A. I DON'T KNOW. SOMETIMES IN CAN LAST MOST OF THE DAY.

* * *

[JOSEPH 58]

A. YES AND NO.
Q. OKAY. COULD YOU EXPLAIN THE "YES AND NO"?
A. WELL, THERE IS NOT REALLY ANY PROOF THAT IT CAN HURT YOUR BABY. YOU KNOW, IT'S A CHANCE THAT IT CAN PROBABLY CAN, YOU KNOW, BUT IT'S REALLY NO PROOF, ACTUAL PROOF THAT IT CAN. YOU KNOW, I WAS HOPING THAT IT WOULDN'T, YOU KNOW. I KNEW, YES, MAYBE THERE IS A CHANCE THAT, YOU KNOW, IT COULD HAVE HURT THEM BUT, YOU KNOW, THEN YOU KNOW, I THOUGHT IT WAS MORE OF A CHANCE THAT IT - YOU KNOW, I WAS JUST HOPING THAT IT WOULDN'T, YOU KNOW, DO THAT TO HIM.
Q. DID YOU THINK . . . ?
A. AND I WAS JUST SCARED.
Q. DID YOU THINK THAT YOUR BABY HAD A RIGHT TO BE BORN DRUG FREE?
A. YES.
Q. YET YOU DIDN'T GET PRENATAL CARE?
MR. OBERDIER: OBJECTION.
A. I WAS SCARED.

Q. YOU WERE SCARED? DID YOU CONTINUE TO USE DRUGS DURING YOUR PREGNANCY?
A. YES.
Q. WHEN DID YOU FIRST SEEK MEDICAL TREATMENT WITH YOUR PREGNANCY IN 1991?
A. I CAN'T REALLY REMEMBER TOO MUCH, YOU KNOW,

[JOSEPH 59]

EXACTLY THE FIRST TIME THAT I WENT. I DO REMEMBER THAT I WENT. I BELIEVE ONCE FROM THE COUNTY JAIL. I WENT TO THE HOSPITAL.
Q. YOU WERE IN THE COUNTY JAIL ALREADY?
A. YES.
Q. WHAT WERE YOU IN THE COUNTY JAIL FOR?
A. PROSTITUTION.
Q. WAS THIS BEFORE OR AFTER YOU KNEW ABOUT YOUR HIV STATUS?
A. I BELIEVE IT WAS BEFORE.
Q. WHEN YOU WENT TO THE JAIL DID YOU TELL THEM THAT YOU WERE PREGNANT, WHEN YOU WERE ARRESTED?
A. YES.
Q. IS THAT WHY THEY TOOK YOU TO THE MEDICAL UNIVERSITY FOR TREATMENT?
A. NO. I WASN'T FEELING WELL.

Q. OKAY. CAN YOU TELL ME ABOUT THAT?
A. I JUST HAD A LITTLE FALSE LABOR, I GUESS.
Q. SO YOU TOLD THE GUARDS YOU THOUGHT YOU WERE IN LABOR?
A. YES.
Q. AND WHAT DID THEY DO?
A. TOOK ME TO THE MEDICAL UNIVERSITY.
Q. ARE THERE ANY MEDICAL FACILITIES AT THE CHARLESTON COUNTY JAIL?

* * *

[JOSEPH 124]

Q. YOU TOLD ME THAT YOU DID SEE THE CRACK BABY PUBLIC SERVICE ANNOUNCEMENT? IS THAT CORRECT?
A. YES.
Q. BUT THAT YOU DO NOT REMEMBER SEEING THE MUSC VIDEO? IS THAT CORRECT?
A. CORRECT.
Q. YOU DID SIGN A CONSENT FORM ON ADMISSION TO THE MEDICAL UNIVERSITY? IS THAT CORRECT?
A. YES.
Q. AND WHEN THE MEDICAL PERSONNEL AT MUSC ASKED YOU ABOUT DRUG USE, YOU VOLUNTARILY TOLD THEM THAT YOU WERE USING COCAINE AND HEROIN? IS THAT CORRECT?
MR. OBERDIER: OBJECTION.
A. I DON'T REMEMBER. I COULD HAVE.

Q. AND WHILE YOU WERE PREGNANT YOU USED DRUGS THAT YOU KNEW WERE ILLEGAL? IS THAT CORRECT?

MR. OBERDIER: OBJECTION.

A. YES.

Q. WHILE PREGNANT YOU POSSESSED DRUGS THAT YOU KNEW WERE ILLEGAL? IS THAT CORRECT?

A. YES.

Q. AND YOU ALSO KNEW THAT TAKING ILLEGAL DRUGS WHILE PREGNANT COULD HARM YOUR UNBORN CHILDREN? IS THAT CORRECT?

A. YES AND NO. I DON'T KNOW. NO.

[JOSEPH 125]

Q. WELL, WE HAVE HAD YES AND NO, AND NO. IT'S GETTING LATE FOR ALL OF US.

A. NO. I'LL JUST SAY "NO" TO THAT.

Q. SO THE USE OF ILLEGAL DRUGS DURING PREGNANCY DOES NOT HARM THE BABY?

MR. OBERDIER: OBJECTION.

A. I DON'T KNOW.

Q. YOU DON'T KNOW?

A. NO.

Q. SO, IS THIS THE ANSWER "I DON'T KNOW" OR "NO"

A. I DON'T KNOW.

Q. AND FROM SEEING THE PUBLIC SERVICE ANNOUNCEMENT, YOU KNEW THAT IF YOU WERE CAUGHT USING OR POSSESSION ILLEGAL DRUGS DURING YOUR PREGNANCY, YOU WOULD BE SUBJECT

TO PROSECUTION?
MR. OBERDIER: OBJECTION.
Q. IS THAT CORRECT?
MR. OBERDIER: OBJECTION.
A. YES.
Q. AND YOU MADE THE INDEPENDENT DECISION TO CARRY THIS CHILD TO TERM, THIS PREGNANCY WITH ALVIN? IS THAT CORRECT?
A. YES.
Q. YOU TOLD ME IT WAS YOUR UNDERSTANDING THAT THE PUBLIC SERVICE ANNOUNCEMENT APPLIED TO ALL OF THE

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[JOSEPH 129]

Q. DO YOU KNOW WHO DOCTOR BIVINS IS?
A. THE NAME SOUNDS FAMILIAR. I PROBABLY READ IT SOMEWHERE, BUT I DON'T - YOU KNOW, I DON'T KNOW.
Q. TO THE BEST OF YOUR RECOLLECTION, DID HE EVER TREAT YOU?
A. I DON'T KNOW.
Q. DO YOU KNOW WHO DOCTOR DELBENE IS?
A. NO.
Q. TO THE BEST OF YOUR RECOLLECTION, HAVE YOU EVER BEEN TREATED BY HIM?
A. I DON'T KNOW.
Q. I THINK I ASKED YOU THIS, BUT WERE YOU EVER

OFFERED THE OPPORTUNITY TO ATTEND TREATMENT INSTEAD OF BEING PROSECUTED?
A. EXCUSE ME? COULD YOU REPEAT THAT?
Q. WERE YOU EVER OFFERED THE OPPORTUNITY TO ATTEND SUBSTANCE ABUSE TREATMENT INSTEAD OF BEING PROSECUTED?
A. WAS I OFFERED THAT?
Q. YES?
A. YES. I THINK SO, YES. YES.
Q. WHEN WAS THAT? DO YOU REMEMBER?
A. I BELIEVE MRS. BROWN TALKED TO ME ABOUT THAT.
Q. THAT FIRST VISIT?
A. AT ONE TIME OR ANOTHER, YES.
Q. AND THE REASON WHY YOU DIDN'T UNDERGO SUBSTANCE

[JOSEPH 130]

ABUSE TREATMENT AT THAT TIME WAS . . . ?
A. I WAS SCARED. I DIDN'T WANT TO GO TO JAIL I DIDN'T TRUST ANYBODY, YOU KNOW.
Q. I'M JUST GOING TO TAKE A MINUTE HERE AND MAKE SURE WE HAVE COVERED EVERYTHING AND I WILL BE RIGHT BACK.
A. OKAY.
(THE DEPOSITION WENT OFF THE RECORD FOR A BRIEF PERIOD.)
Q. JUST A FEW MORE QUESTIONS AND WE WILL WRAP THIS

UP. AT ANYTIME DURING YOUR TREATMENT AT THE MEDICAL UNIVERSITY IN 1991 . . . ? - ARE YOU WITH ME?

A. YES.

Q. OKAY. . . . DID ANYONE OTHER THAN SHIRLEY BROWN TALK TO YOU ABOUT DRUG TREATMENT?

A. I DON'T RECALL.

Q. OKAY. MAYBE I SHOULD MAKE THAT MORE GENERAL. DID ANYONE OTHER THAN SHIRLEY BROWN TALK TO YOU ABOUT THE CONTENTS OF THE PUBLIC SERVICE ANNOUNCEMENT AND WHAT WE CALL THE INTER-AGENCY POLICY?

A. YES. DID ANYONE ELSE TALK TO ME ABOUT IT?

Q. YES?

A. I DON'T RECALL. I DON'T RECALL.

Q. OKAY. AND ALVIN, YOUR SON, HOW IS HE DOING NOW?

MR. OBERDIER: OBJECTION.

Q. DOES HE HAVE ANY HEALTH PROBLEMS?

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF HERBERT KEBLER

[KEBLER 838]

A. CORRECT.
Q. A DIRECTOR OF THE DIVISION OF SUBSTANCE ABUSE, NEW YORK STATE PSYCHIATRIC INSTITUTE?
A. CORRECT.
Q. AND EXECUTIVE VICE PRESIDENT AND MEDICAL DIRECTOR ON THE CENTER OF ADDICTION AND SUBSTANCE ABUSE?
A. CORRECT.
Q. AND, DOCTOR, YOU'RE A MEMBER OF A NUMBER PROFESSIONAL ORGANIZATIONS AS WELL?
A. THAT'S CORRECT.
Q. AND HAVE YOU DONE LECTURES AND PRESENTATION ON SUBSTANCE ABUSE TREATMENT?
A. I PROBABLY HAVE GIVEN OVER A THOUSAND OR 1500 LECTURES AT MOST MEDICAL SCHOOLS ACROSS THE UNITED STATES. AND I CHAIR THE SCIENTIFIC ADVISORY BOARD OF A NUMBER OF ORGANIZATIONS, INCLUDING DARE, WHICH TRIES TO EDUCATE OUR STUDENTS AT MANY OF THE RESEARCH INSTITUTES AND UNIVERSITIES. AND I'M ALSO A FELLOW IN THE AMERICAN PSYCHIATRIC ASSOCIATION; THE AMERICAN

COLLEGE OF PSYCHIATRISTS; AMERICAN COLLEGE OF NEUROPSYCHIATRISTS, PHARMACOLOGISTS, ETCETERA.

Q. HAVE YOU BEEN AWARDED HONORS IN YOUR CAREER, DOCTOR?

A. YES, I HAVE RECEIVED THE HIGHEST AWARD FOR RESEARCH FROM THE AMERICAN PSYCHIATRIC ASSOCIATION. THE NATHAN EDDY AWARD FROM THE COLLEGE, ON PROBLEMS OF DRUG DEPENDENCE. AND RECENTLY INDUCTED AS A MEMBER OF THE INSTITUTE OF MEDICINE OF

[KEBLER 839]

THE NATIONAL ACADEMY OF SCIENCE.

Q. AND, DOCTOR, I HAVE GOT YOUR CV HERE DATED JULY 1995, AND IT'S 26 PAGES CONTAINING ARTICLES AND PUBLICATIONS BY YOU; IS THAT CORRECT?

A. THAT'S CORRECT. I HAVE WRITTEN CLOSE TO TWO HUNDRED PAPERS, ARTICLES, CHAPTERS. AND I'M THE COEDITOR OF THE AMERICAN PSYCHIATRIC ASSOCIATION TEXTBOOK ON SUBSTANCE ABUSE TREATMENT.

Q. AND ARE THESE PEER REVIEWED JOURNALS, DOCTOR?

A. PROBABLY 90 PERCENT OR SO ARE.

Q. DOCTOR, AT OUR REQUEST HAVE YOU REVIEWED THE INTERAGENCY POLICY AT ISSUE IN THIS CASE?

A. YES, I HAVE.

Q. AND HAVE YOU FORMULATED OPINIONS ABOUT THE INTERAGENCY

POLICY?
A. YES, I HAVE.
Q. CAN YOU EXPLAIN TO THE JURY THE DIFFERENCE - EXPLAIN TO THE JURY WHAT COERCIVE TREATMENT IS?
A. COERCIVE TREATMENT.
Q. COERCIVE TREATMENT.
A. WE HAVE A SAYING IN THE FIELD OF DRUG ABUSE THAT DRUG USE IS A PREVENTABLE DISORDER AND DRUG ADDICTION IS A TREATABLE DISEASE, SO THAT WE BELIEVE THAT WE KNOW HOW, NOT AS WELL AS WE WOULD LIKE OR OFTEN AS WE WOULD LIKE TO TREAT DRUG ADDICTION, BUT MUCH OF THE TIME IT CAN BE SUCCESSFULLY

[KEBLER 840]

TREATED. HOWEVER, THE NATURE OF THE DISORDER IS SUCH THAT GIVEN THE PLEASURABLE EFFECTS OF THE DRUGS THAT WE'RE DEALING WITH, AND THE FACT THAT THEY CHANGE THE REWARD SYSTEM OF THE BRAIN, OFTEN INDIVIDUALS ARE NOT INITIALLY WILLING TO COME INTO TREATMENT VOLUNTARILY. THEY OFTEN DON'T WANT TO GIVE UP THE FEELINGS THAT THE DRUGS CAN PRODUCE.
SO OVER THE PAST 30 YEARS THERE HAVE BEEN A NUMBER OF INSTANCES WHERE INDIVIDUALS HAVE BEEN COERCED INTO TREATMENT. NOT - IN MANY WAYS PROBABLY MOST ADDICTS ARE

COERCED INTO TREATMENT. THE ISSUE IS ONLY WHO IS DOING THE COERCING. WE OFTEN THING OF COERCIVE TREATMENT AS PRIMARILY SOMETHING DONE BY THE CRIMINAL JUSTICE SYSTEM, BUT PROBABLY THE VAST MAJORITY OF ADDICTS THAT I TREAT ARE THERE BECAUSE AN EMPLOYER HAS SAID GET TREATMENT OR I'M GOING TO FIRE YOU. A SPOUSE HAS SAID GET TREATMENT OR I'M GOING TO LEAVE YOU. OR A JUDGE HAS SAID GET TREATMENT OR YOU WILL GO TO JAIL. SO THAT PROBABLY THE LARGE MAJORITY OF PATIENTS COME INTO TREATMENT THROUGH SOME SORT OF COERCIVE INTENT.

Q. DOES COERCIVE TREATMENT MEAN FORCED TREATMENT OR MANDATORY TREATMENT?

A. WELL, THE LANGUAGE HERE IS A LITTLE SLIPPERY. I DISTINGUISH BETWEEN COERCED TREATMENT AND MANDATORY TREATMENT. MANDATORY TREATMENT IS WHEN SOMEONE SAYS YOU MUST HAVE TREATMENT. COERCIVE TREATMENT SAYS YOU HAVE A CHOICE. YOU HAVE TO HAVE TREATMENT OR CHOOSE THE ALTERNATIVE. THE

[KEBLER 841]

CONTINGENCY.

SO IN THE CASE OF THE EMPLOYEE, COERCIVE TREATMENT WOULD SAY YOU HAVE TO HAVE TREATMENT OR YOU'LL BE FIRED. OR

THE SPOUSE WHO SAYS YOU HAVE TO HAVE TREATMENT OR I'LL LEAVE YOU. SO, THE TREATMENT IS COERCED BECAUSE YOU HAVE A COERCION THERE, BUT THEY DO HAVE THE OPTION OF TAKING THE ALTERNATIVE, SAYING I DIDN'T LIKE THAT JOB ANYWAY, YOU KNOW, I'M GOING TO LEAVE THAT JOB. SO, WHEREAS MANDATORY TREATMENT YOU MUST GO INTO THAT TREATMENT. YOU HAVE NO CHOICE. SO, THAT'S AT LEAST HOW I USE THE TERM.

Q. FROM YOUR REVIEW OF THE INTERAGENCY POLICY, WAS IT MANDATORY TREATMENT OR COERCIVE TREATMENT?

A. IT'S MY UNDERSTANDING THAT THIS WAS COERCED TREATMENT.

Q. AND CAN YOU EXPLAIN TO THE JURY WHAT IS MEANT BY THE CONCEPT OF HITTING ROCK BOTTOM?

A. WELL TRADITIONALLY THIS AROSE OUT OF THE ALCOHOLISM LITERATURE. AND THE IDEA WAS THAT YOU COULD NOT REALLY TREAT THE ALCOHOLIC OR THE ADDICT UNTIL THEY HAD HIT BOTTOM UNTIL THEY SUFFERED THE CONSEQUENCES OF THE PROBLEM, WHETHER THAT BE THE LIVER DISEASE, THE LOSS OF THE JOB, THE LOSS OF HEALTH, THE LOSS OF FAMILY.

MODERN THINKING IS THAT YOU DON'T WAIT FOR THE ADDICT TO HIT BOTTOM, YOU RAISE THE BOTTOM. THAT IS, YOU TRY AND CONFRONT THE INDIVIDUAL WITH THE CONSEQUENCES OF THEIR

25 BEHAVIOR IF THEY CONTINUE USING IT. THE REASON YOU DO THAT

[KEBLER 842]

1 IS, IT'S A LOT EASIER TO TREAT AN INDIVIDUAL WHO STILL HAS A
2 JOB RATHER THAN ONE WHO HAS LOST IT. IT'S EASIER TO TREAT AN
3 INDIVIDUAL WHO HAS A FAMILY RATHER THAN ONE THAT HAS LOST A
4 FAMILY. SO THAT RATHER THAN WAIT UNTIL ALL OF THOSE
5 DISASTROUS THINGS HAVE OCCURRED AND THEN HAVE THE INDIVIDUAL
6 TREATMENT, WHAT YOU TRY AND DO IS PRESENT THE INDIVIDUAL WITH
7 A CONTINGENCY, YES, YOU CAN KEEP YOUR JOB, BUT IF YOU GET
8 TREATMENT.
9 Q. AND, DOCTOR, IF A PERSON WHO ABUSES DRUGS IS NOT WILLING
10 TO GO INTO TREATMENT VOLUNTARILY, IS THERE ANY EVIDENCE THAT
11 INVOLUNTARY OR COERCED TREATMENT CAN BE EFFECTIVE?
12 A. YES. THERE IS A SUBSTANTIAL AMOUNT OF RESEARCH SHOWING
13 THAT INVOLUNTARY TREATMENT IS ABOUT AS EFFECTIVE. IT DOESN'T
14 MEAN THAT IT'S IDENTICALLY EFFECTIVE, PROBABLY GIVE OR TAKE 10
15 PERCENT ON EITHER SIDE. SOMETIMES IT MIGHT BE SOMEWHAT MORE
16 EFFECTIVE, SOMETIMES SOMEWHAT LESS EFFECTIVE.
17 THE LITERATURE IS NOT AS STRONG AS WE WOULD LIKE.

PARTIALLY BECAUSE THE CRIMINAL JUSTICE SYSTEM IN GENERAL DOESN'T LIKE THAT KIND OF RESEARCH. RELATIVELY FEW JUDGES ARE WILLING TO SAY, WELL, WE'LL LET THE LUCK OF THE DRAW DECIDE WHETHER YOU GET PUT INTO TREATMENT OR GET PUT INTO A TREATMENT GROUP. MOST OF THE TIME THE COURT SYSTEM SAYS WE WANT YOU NOW, WE WANT THAT INDIVIDUAL IN TREATMENT.

SO IT'S HARD TO DO THE KIND OF CONTROLLED STUDIES THAT ONE WOULD LIKE. BUT, IN GENERAL THE PREPONDERANCE OF

[KEBLER 843]

STUDIES THAT I HAVE SEEN SUGGEST THAT INVOLUNTARY TREATMENT WORKS ABOUT AS WELL AS VOLUNTARY TREATMENT. ONE OF THE CRITICAL THINGS IN SUCCESSFUL TREATMENT IS HOW LONG TO STAY THERE.

AGAIN, THERE IS REASONABLY GOOD DATA THAT THE LONGER YOU'RE IN TREATMENT THE BETTER OFF YOU ARE. THIS IS A DIFFICULT DISORDER TO TREAT. AND THE LONGER YOU CAN KEEP THE PERSON IN THAT TREATMENT, THE GREATER THE LIKELIHOOD YOU'RE GOING TO HAVE SUCCESS. AND CERTAINLY ONE OF THE THINGS COERCED TREATMENT DOES IS KEEP THAT INDIVIDUAL IN TREATMENT LONGER.

THE COURT: MS. SHOWERS, I'M GOING TO RECESS HERE. LET'S RECESS, LADIES AND GENTLEMEN, FOR LUNCH. WE'LL BE IN RECESS UNTIL 2:30.

(WHEREUPON, A LUNCH BREAK WAS TAKEN.)

THE COURT: GO AHEAD.

MS. SHOWERS: THANK YOU, YOUR HONOR.

Q. (BY MS. SHOWERS, CONTINUING) DOCTOR KEBLER, JUST SO WE'RE CLEAR ON THE DISTINCTIONS AND DIFFERENT TYPES OF TREATMENT FOR SUBSTANCE ABUSE, CAN YOU DRAW THAT OUT FOR THE JURY WHAT YOU TALKED ABOUT THIS MORNING, OF HOW COERCIVE TREATMENT BREAKS DOWN FROM THE -

A. YOU HAVE THERE ARE A NUMBER OF WAYS YOU CAN MAKE THE DISTINCTION. ONE WAY IS VOLUNTARY TREATMENT AND INVOLUNTARY. AND THEN UNDER INVOLUNTARY TREATMENT YOU WOULD HAVE A COUPLE

* * *

[KEBLER 845]

THAT'S APPROPRIATE.

THE COURT: I DON'T SEE WHY SHE CAN'T STAND OVER HERE AND LOOK AT WHAT IS GOING ON AS LONG AS SHE IS NOT DISTURBING THE JURY.

MR. HOOD: YES.

THE COURT: GO AHEAD.

A. AS I UNDERSTAND THE MUSC POLICY, IT WOULD FALL IN THE

REALM OF COERCED RATHER THAN MANDATORY. THAT IS THAT THE WOMEN WERE GIVEN THE CHOICE OF THE OPTIONS, TREATMENT OR.

Q. AND, DOCTOR, FROM YOUR REVIEW OF THIS POLICY, DID VOLUNTARY TREATMENT WORK WITH THESE WOMEN?

A. AS I UNDERSTAND IT, FROM READING A VARIETY OF DOCUMENTS THAT I WENT OVER BEFORE MY DEPOSITION --

MS. PALTROW: OBJECTION, YOUR HONOR, BASED ON -- HE IS GOING TO BASE THIS ON HEARSAY.

THE COURT: OKAY. YOU WILL HAVE TO LAY A PROPER FOUNDATION.

Q. (BY MS. SHOWERS, CONTINUING) DID YOU REVIEW MATERIALS ABOUT THE SUCCESS OF THE INTERAGENCY POLICY?

A. YES, I DID.

Q. DID YOU REVIEW ANY MATERIALS ABOUT THE EXPERIENCE BEFORE THE INTERAGENCY POLICY AND THE SUCCESS OF GETTING WOMEN INTO TREATMENT VOLUNTARILY?

MS. PALTROW: YOUR HONOR.

THE COURT: YES, MA'AM.

* * *

[KEBLER 847]

Q. (BY MS. SHOWERS, CONTINUING) WHAT DID YOU REVIEW, DOCTOR, IN FORMULATING THAT OPINION?

A. THESE WERE VARIOUS DEPOSITIONS PERTAINING TO THE CASE

WHICH STATED THAT INDIVIDUALS, PRIOR TO THE IMPLEMENTATION OF THE POLICY --

MS. PALTROW: OBJECTION, YOUR HONOR. THIS IS BASED ON HEARSAY WHAT HE READ IN DEPOSITIONS.

THE COURT: I SUSTAIN THE OBJECTION UNTIL A PROPER FOUNDATION IS LAID FOR IT.

Q. (BY MS. SHOWERS, CONTINUING) DOCTOR, THE INFORMATION THAT YOU REVIEWED IN FORMULATING YOUR OPINION, YOU REFERRED TO AS DEPOSITION. WAS THERE ANYTHING ELSE?

A. THERE WERE PAPERS THAT HAD BEEN PREPARED BY DIFFERENT INDIVIDUALS CONCERNING THE EXPERIENCE IN THE PRENATAL CLINICS AT MUSC.

Q. AND THOSE DOCUMENTS AND THOSE MATERIALS, ARE THEY THE TYPES OF DOCUMENTS AND MATERIALS THAT EXPERTS IN YOUR FIELD NORMALLY RELY UPON IN FORMULATING OPINIONS SUCH AS THIS?

A. THEY WOULD NOT HAVE THE RIGOR OF A SCIENTIFIC ARTICLE, IF THAT'S WHAT YOU MEAN, NO.

Q. BUT IN FORMULATING OPINIONS, WOULD EXPERTS SUCH AS YOURSELF REASONABLY RELY ON THAT INFORMATION?

MS. PALTROW: OBJECT, YOUR HONOR. ASKED AND ANSWERED.

THE COURT: I'LL PERMIT IT.

[KEBLER 848]

A. RESTATE THE QUESTION, PLEASE.
Q. SURE. WOULD THE MATERIALS THAT YOU REVIEWED BY THE TYPE OF MATERIALS THAT EXPERTS IN YOUR FIELD WOULD REASONABLY RELY UPON IN FORMULATING OPINIONS SUCH AS THIS?
A. NO. THERE IS NOT A SYSTEMATIC ACCOUNTING OF PATIENTS. THE INDICATION WAS THAT --
MS. PALTROW: OBJECTION, YOUR HONOR, IF HE GOES FURTHER HE IS GOING TO SAY WHAT THE INDICATION WAS.
THE COURT: I'VE SIC RULE THE OBJECTION.
A. THAT INDIVIDUALS SIMPLY OFFERED TREATMENT DID NOT CEASE THEIR COCAINE USE, MOST DID NOT GO TO TREATMENT.
THE COURT: I SUSTAIN THE OBJECTION AS TO THAT.
THE WITNESS: OKAY.
THE COURT: HE CANNOT PUBLISH WHAT WAS IN THOSE DOCUMENTS. AND -- BECAUSE THEY ARE HEARSAY. BUT, AND FOR HIM TO RELY ON THEM, THEY HAVE TO BE QUALIFIED IN SUCH A WAY FOR HIM TO RELY ON THEM SINCE THEY'RE NOT ADMISSIBLE.
YOU MAY PROCEED.
MS. SHOWERS: THANK YOU, YOUR HONOR.
Q. (BY MS. SHOWERS, CONTINUING) DOCTOR, IN YOUR EXPERIENCE

IN THE OFFICE OF THE DRUG CZAR, WERE YOU INVOLVED IN THE DEVELOPMENT OF DRUG POLICY?
A. YES.
Q. AND WHAT AREAS OF CONCERN WERE THERE DURING YOUR TIME PERIOD IN THE OFFICE OF THE DRUG CZAR?

* * *

[KEBLER 852]

DATA. AND THE ADVISORY COMMITTEES NOTES SAID THAT BECAUSE OF THAT YOU NEED TO EXPLORE WHAT HIS UNDERLYING DATA IS BY WAY OF DISCOVERY.

NOW IF YOU HAVE DISCOVERED THAT ANYTHING HE HAS RELIED UPON IS UNRELIABLE, THEN WE NEED TO FLESH THAT OUT NOW AND FIND OUT ABOUT IT.

MS. PALTROW: YES, SIR.

THE COURT: IS THERE ANY SUCH THING?

MS. PALTROW: THAT WHAT HE IS RELYING ON IS UNRELIABLE?

THE COURT: HE IS NOT DISCUSSING THE TRUTH OF THESE DOCUMENTS. HE IS RELYING ON THEM AS RULE 703 PERMITS HIM TO RELY ON THEM. SOMETHING AN EXPERT IN HIS FIELD REASONABLY RELIES UPON TO EXPRESS THE OPINIONS SUCH AS HE IS EXPRESSING IN THIS COURT.

NOW IF THEY'RE NOT REASONABLY RELIED UPON, I'LL BE

GLAD TO DISCUSS THAT ISSUE AND DEBATE IT.

MS. PALTROW: I WON'T RAISE THAT NOW, YOUR HONOR.

THE COURT: OKAY.

Q. (BY MS. SHOWERS, CONTINUING) BACK TO THE PREVALENCE OF COCAINE DURING THE TIME PERIOD, DR. KEBLER, WHAT TIME PERIOD ARE YOU TALKING ABOUT?

A. THE TIME PERIOD OF THE LATTER PART OF THE 1980'S.

Q. GO AHEAD WITH YOUR ANSWER ABOUT THE PREVALENCE OF COCAINE.

[KEBLER 853]

A. PERHAPS WHAT I SHOULD DO IS LAY THE STAGE FOR HOW WE GET THERE. HOW DO WE KNOW WHAT IS GOING ON ARE THREE MAJOR DATA SOURCES. ONE, THE HOUSEHOLD SURVEYS WHICH GATHERS DATA ABOUT DRUG USE, PEOPLE WHO LIVE IN HOUSEHOLD. THE HS SURVEYS WHICH LOOK AT DRUG USE AMONG COLLEGE STUDENTS. AND THE EMERGENCY ROOM DATA WHICH LOOKED AT THE AMOUNT OF DRUG USE AMONG PEOPLE COMING TO EMERGENCY ROOMS, THE REASONS THEY COME TO THE EMERGENCY ROOMS AS FAR AS ILLICIT DRUGS ARE CONCERNED.

ALL OF THOSE SURVEYS INDICATED THAT DURING THE 1980'S, THERE WAS A SHARP RISE IN COCAINE USE. BY THE

MID-80'S, FOR EXAMPLE, THE HOUSEHOLD SURVEY INDICATED THAT SIX MILLION AMERICANS WERE USING COCAINE DURING THE PAST 30 DAYS.
THERE WERE -
Q. HOW MANY DID YOU SAY?
A. SIX MILLION AMERICANS WERE USING COCAINE CURRENTLY.
CURRENTLY DEFINED IN THE PAST 30 DAYS. THERE WAS A MAJOR CONCERN SINCE MANY OF THESE WERE WOMEN, THAT MANY OF THEM WERE TAKING COCAINE DURING PREGNANCY, THAT THERE WOULD BE A MAJOR PROBLEM WITH IMPAIRED NEWBORNS. AND THAT'S WHY WE MADE PREGNANT ADDICTS ONE OF OUR THREE MAJOR CONCERNS.
AND SPECIFICALLY IT WAS - OR PRIMARILY IT WAS INDIVIDUALS WHO WERE ADDICTED TO COCAINE. AND THE FORM OF IT CALLED CRACK. BOTH OF IT - BOTH OF THEM WERE VERY MUCH ON OUR RADAR SCREEN DURING THAT TIME.
Q. AND WHAT WAS THE STRATEGY DEVELOPED IN YOUR OFFICE TO

* * *

[KEBLER 859]

AND HERE IN CHARLESTON?
A. YES. ONE - IN 1992, FOR EXAMPLE A PAPER ON USER ACCOUNTABILITY WAS ISSUED BY THE OFFICE OF NATIONAL DRUG CONTROL POLICY. AND IN THE AREA OF THE PREGNANT ADDICTS TWO PROGRAMS WERE CITED.

MS. PALTROW: OBJECTION, YOUR HONOR. IT'S HEARSAY.

THE COURT: I CAN'T TELL THAT IT'S NOT HEARSAY. I SUSTAIN THE OBJECTION.

MS. SHOWERS: DOCTOR.

THE COURT: IF HE HAS OPINIONS TO EXPRESS THAT ARE RELEVANT TO THIS CASE, LET'S GET TO THEM. AND IF HE HAS TO EXPLAIN THEM, LET'S EXPLAIN THEM. BUT IT'S HARD FOR ME TO TELL WHAT'S RELEVANT WHEN THE EXPLANATION COMES BEFORE THE OPINION.

MS. SHOWERS: YES, SIR.

Q. (BY MS. SHOWERS) HAVE YOU REVIEWED THE INTERAGENCY POLICY, THE ONE DEVELOPED BY THE MUSC, THE SOLICITOR'S OFFICE AND THE CHARLESTON CITY POLICE DEPARTMENT?

A. YES, I HAVE.

Q. AND HAVE YOU REACHED OPINIONS ABOUT THAT POLICY, TO REASONABLE DEGREE OF MEDICAL CERTAINTY, MOST PROBABLY?

A. YES. I FEEL THAT THE POLICY WAS A REASONABLE RESPONSE TO THE PROBLEM OF COCAINE-ABUSING PREGNANT WOMEN AT THAT PERIOD OF TIME.

MS. SHOWERS: CAN I HAVE A MOMENT, YOUR HONOR.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF ELLEN KNIGHT

[KNIGHT 121]

A. I JUST WAS - I WALKED IN.
Q. WERE YOU REFERRED TO MUSC BY ANYONE?
A. I DON'T RECALL BEING REFERRED.
Q. OKAY. WHEN YOU CAME TO MUSC, WERE YOU RECEIVING PRENATAL CARE THERE?
A. YES, SIR.
Q. DURING YOUR PRENATAL CARE, WHAT, IF ANYTHING, WAS TOLD TO YOU ABOUT SUBSTANCE ABUSE AND YOUR PREGNANCY?
A. NOTHING AT ALL WAS TOLD TO ME ABOUT SUBSTANCE ABUSE AND PREGNANCY.
Q. DURING YOUR PRENATAL CARE, DID YOU EVER MEET NURSE BROWN?
A. YES, I DID.
Q. DURING YOUR PRENATAL CARE, DID NURSE BROWN EVER CONSULT OR COUNSEL YOU ABOUT PRENATAL CARE AND SUBSTANCE ABUSE?
A. NO, SIR. BUT I WOULD LIKE TO SAY SOMETHING. I DIDN'T MEET HER DURING MY PRENATAL CARE. I MET HER AT THE TIME MY SON WAS BORN.
Q. SO DURING THE PRENATAL CARE -
A. I NEVER SEEN HER.
Q. YOU NEVER MET HER?

A. NO, SIR.
Q. DURING YOUR PRENATAL CARE, WERE YOU SHOWN THE VIDEOTAPE THAT YOU SAW IN THE PROGRAM TODAY?
A. NO, SIR.
Q. DURING YOUR PRENATAL CARE, WERE YOU GIVEN ANY LETTER FROM

[KNIGHT 122]

THE PHYSICIANS AT MUSC CONCERNING SUBSTANCE ABUSE AND PREGNANCY?
A. NO. NEVER WAS.
Q. DURING YOUR PRENATAL CARE, DID ANYONE EVER TELL YOU ABOUT THE RESULTS OF A URINE SCREEN?
A. NO, SIR.
Q. DO YOU REMEMBER THE DATE OF BIRTH OF YOUR BABY?
A. YES, SIR.
Q. WHAT WAS THAT?
A. NOVEMBER 9TH - NOVEMBER 7, 1989.
Q. AND HOW WAS THAT BABY DELIVERED, NATURAL CHILDBIRTH OR CESAREAN SECTION?
A. NATURAL CHILDBIRTH.
Q. OKAY. AFTER THE BABY WAS BORN - BY THE WAY, WHAT WAS THE BABY'S NAME? OR WHAT IS THE BABY'S NAME?
A. BRANDON.
Q. BRIAN?
A. BRANDON.
Q. AFTER BRANDON WAS BORN, DID YOU HAVE OCCASION TO HAVE A CONVERSATION WITH NURSE BROWN?
MS. SHOWERS: OBJECT TO THE LEADING OF THE WITNESS,

YOUR HONOR.

MR. WHERRY: IT'S PRELIMINARY.

THE COURT: GO AHEAD.

Q. (BY MR. WHERRY, CONTINUING) AFTER BRANDON'S BIRTH DID

[KNIGHT 123]

YOU HAVE AN OCCASION TO HAVE A CONVERSATION WITH NURSE BROWN?

A. YES, SIR.

Q. WHAT DID SHE TELL YOU?

A. WELL, I INFORMED HER THAT THERE WAS ANOTHER GIRL IN THE ROOM WITH ME AND SHE HAD HER BABY, AND I HAD NOT BEEN ABLE TO SEE MY SON. AND I WAS ASKING HER WHY WAS I NOT ABLE TO SEE MY SON.

Q. LET ME STOP YOU THERE FOR A MOMENT HOW LONG AFTER BRANDON'S BIRTH WAS THIS?

A. PROBABLY HOURS.

Q. OKAY. AND WHAT WAS HER RESPONSE TO YOU?

A. THAT THEY WERE RUNNING TESTS ON BRANDON.

Q. WHAT HAPPENED NEXT?

A. WELL SOME TIME WENT BY AND I JUST KEPT ASKING COULD I SEE HIM. AND I WAS DETAIN FROM SEEING HIM.

Q. BY WHOM?

A. SHIRLEY BROWN AND SOME OTHER DOCTORS MAYBE OR NURSES.

Q. OKAY. WHAT HAPPENED NEXT?

A. SHIRLEY BROWN CAME INTO MY ROOM AND ASKED ME - NO. SHE

CAME INTO MY ROOM AND TOLD ME THAT BRANDON HAD TESTED POSITIVE FOR COCAINE AND SHE NEEDED MY CONSENT TO DO FURTHER TESTS ON MY SON.

Q. NOW, AT THAT POINT IN TIME WHEN SHE TOLD YOU THAT, DESCRIBE FOR THE JURY, PLEASE, YOUR PHYSICAL CONDITION? NOT YOUR MENTAL CONDITION YET, BUT YOUR PHYSICAL CONDITION?

[KNIGHT 124]

A. WELL, I WAS VERY UPSET AT THIS TIME I WAS CONCERNED ABOUT THE FURTHER TESTING THAT THEY NEEDED TO DO, IF ANYTHING WAS WRONG WITH BRANDON. I SIGNED THIS FORM WITHOUT READING IT BECAUSE I JUST WANTED THEM TO DO WHATEVER THEY HAD TO DO IN HIS BENEFIT.

Q. WHAT WERE YOU CONCERNED ABOUT?

A. WELL, THEY TOLD ME THAT HE HAD TESTED POSITIVE FOR DRUGS, SO I WAS JUST CONCERNED THAT ANYTHING THAT THEY COULD DO TO HELP HIM IF HE WAS HAVING A PROBLEM TO DO IT.

Q. WHAT HAPPENED NEXT?

A. WELL SOME MORE HOURS WENT BY. AND I DIDN'T GET TO SEE BRANDON THAT DAY. THE NEXT MORNING I SAW SHIRLEY BROWN. SHE CAME TO MY ROOM. AND I HAD ASKED AGAIN ABOUT SEEING MY SON.

AND SHE TOLD ME THAT I WOULD BE LEAVING THE HOSPITAL SOON, THAT I WAS BEING RELEASED. SO THAT I WOULD GET TO SEE HIM AT THAT TIME.

Q. DID THAT HAPPEN?

A. NO.

Q. WHAT HAPPENED?

A. THEY TOLD ME I WAS GOING TO BE RELEASED. SO I CALLED MY OTHER SONS TO COME AND BRING ME SOME CLOTHES, BECAUSE WHEN I WENT GOT TO HOSPITAL I WENT IN MY PAJAMAS. SO SINCE I WAS BEING RELEASED I CALLED THEM TO BRING ME SOME CLOTHES. BY THE TIME THEY ARRIVED, SHIRLEY BROWN ENTERED MY ROOM AND SAID THAT I NEEDED TO COME INTO ANOTHER ROOM TO SIGN SOME FORMS.

[KNIGHT 125]

Q. LET ME STOP YOU HERE. ARE YOUR TWO OTHER SONS AT THE HOSPITAL THEN

A. (WITNESS NODS HEAD.) YES.

Q. LET THE RECORD REFLECT THAT SHE NODDED HER HEAD YES.

AND WHAT HAPPENED, MS. KNIGHT?

A. THEY WERE STANDING OUTSIDE - OUTSIDE MY ROOM. AND I WENT WITH SHIRLEY AND SOMEBODY ELSE TO A LITTLE OFFICE WHERE I WAS ARRESTED.

Q. WHO ARRESTED YOU?

A. I DON'T KNOW WHO THEY WERE.

Q. HOW MANY PEOPLE?

A. ABOUT THREE.
Q. HOW DID THEY ARREST YOU? WHAT DID THEY DO TO YOU?
A. THEY READ ME MY RIGHTS. AND THEN THEY HANDCUFFED ME.
AND I ASKED THEM COULD I PUT ON MY CLOTHES, BECAUSE MY SON WAS
STANDING OUTSIDE THE DOOR WITH MY CLOTHES. AND THEY TOLD ME
NO.
Q. WHAT WERE YOU WEARING?
A. I DON'T REMEMBER. I THINK I HAD ON PAJAMA.
Q. WHAT WAS YOUR PHYSICAL CONDITION AT THAT TIME?
A. I WAS BLEEDING HEAVY. I NEVER HAD A CHILD NATURAL
CHILDBIRTH. MY OTHER TWO SONS WERE BORN CESAREAN.
Q. WERE YOU OR WERE YOU NOT RECEIVING ANY MEDICATION TO HELP
CONTROL THAT BLEEDING?
A. NO, SIR.

[KNIGHT 126]

Q. WERE YOU HANDCUFFED IN FRONT OF YOU OR BEHIND YOU?
A. IN FRONT.
Q. WERE YOU PLACED IN SHACKLES?
A. I DON'T RECALL.
Q. WERE YOU TAKEN FROM THE HOSPITAL THEN?
A. YES, SIR.
Q. HOW?
A. IN A WHEELCHAIR WITH HANDCUFFS ON.
Q. WAS A SHEET PLACED OVER YOU?
A. YES.

Q. WHEN YOU WERE TAKEN OUT IN THE WHEELCHAIR HANDCUFFED WITH THE SHEET OVER YOU, WHERE WERE YOUR SONS?
A. IN THE HALL.
Q. FROM WHAT YOU COULD DETERMINE, COULD THEY SEE YOU?
A. THEY SAW ME AND THEY SAW THE HANDCUFFS, BECAUSE THE SHEET DIDN'T GET THROWN OVER ON ME UNTIL WE PASSED THE NURSE STATION. AND THERE WAS A NURSE THERE THAT KNEW MY PARENTS.
Q. SO WHEN YOU WENT FROM THE ROOM TO THE AREA OF THE NURSE STATION, YOU HAD NO SHEET?
A. NO, SIR.
Q. AND WERE YOUR SONS IN THAT AREA?
A. YES, SIR.
MS. SHOWERS: YOUR HONOR, I OBJECT TO THE CONTINUED LEADING OF THE WITNESS.
THE COURT: YOU'RE LEADING HER.

[KNIGHT 127]

Q. (BY MR. WHERRY, CONTINUING) HOW DID YOU GET FROM THAT AREA OUTSIDE THE HOSPITAL?
A. I REMEMBER BEING WHEELED DOWN A HALLWAY. IT SEEMS LIKE IT CAME THROUGH THE CHILDREN'S - NEAR THE CHILDREN'S HOSPITAL. AND I EXITED THE HOSPITAL THROUGH THE ASHLEY AVENUE ENTRANCE, WHICHEVER ENTRANCE THAT IS. I DON'T KNOW IF THAT'S THE FRONT OR THE BACK OF THE HOSPITAL.

Q. DESCRIBE, IF YOU WILL, YOUR EMOTIONAL CONDITION AT THAT TIME?
A. I WAS IN SHOCK.
Q. WHAT DO YOU MEAN BY THAT?
A. I COULDN'T FOCUS ON ANYTHING. I COULDN'T THINK ABOUT IT.
Q. SORRY?
A. I COULDN'T FOCUS ON ANYTHING. I COULDN'T THINK AT THAT TIME. I REALLY COULDN'T BELIEVE WHAT WAS HAPPENING.
Q. WHERE WERE YOU TAKEN FROM THE HOSPITAL?
A. TO THE CITY JAIL ON LOCKWOOD.
Q. DESCRIBE THAT JAIL.
A. I HAD NEVER BEEN IN A JAIL BEFORE. IT WAS A VERY SMALL CELL. IT WAS IN NOVEMBER OF '89, SO IT WAS VERY COLD. I DIDN'T HAVE A COAT. I HAD A LITTLE STEEL, METAL TOILET ON THE FLOOR THAT WAS NOT SANITARY, IT WAS FILLED WITH OTHER PEOPLES' WASTE.
Q. HOW MANY PEOPLE WERE IN THE CELL WITH YOU?
A. NOBODY.

* * *

[KNIGHT 130]

WITH?
A. WELL, THEY WERE ALL SUPPOSED TO BE FEMALES.
Q. WHAT, IF ANY, FURNITURE WAS IN THE CELL?
A. THERE WERE COTS. AND TOILETS. AND A TABLE. A BIG

TABLE.
Q. APPROXIMATELY HOW MANY COTS WERE IN THE CELL?
A. ABOUT 30, I GUESS. I DON'T KNOW.
Q. THE TOILETS THAT YOU MENTIONED, DESCRIBE WHETHER OR NOT THERE WERE ANY PRIVACY PARTITIONS FOR THOSE TOILETS?
A. NO, SIR.
Q. WERE THERE OR WERE THERE NOT CHAIRS FOR THE TABLE?
A. IT WAS LIKE A PICNIC BENCH TYPE TABLE.
Q. DID THERE COME A TIME AT WHICH YOU WENT TO COURT TO HAVE BAIL SET?
A. YES, SIR.
Q. WHAT HAPPENED THEN?
A. I WAS TAKEN BEFORE A JUDGE. AND, UMM, I HAD TO WAIT A LONG TIME. I DON'T KNOW HOW LONG BEFORE MY CASE CAME UP. I DON'T REMEMBER WHAT WAS SAID, BUT I JUST REMEMBER THAT MY BAIL WAS SET.
Q. WHAT WAS YOUR BAIL?
A. TEN THOUSAND DOLLARS.
MS. SHOWERS: YOUR HONOR, I WOULD LIKE TO OBJECT AGAIN TO THE RELEVANCE, BODINE.
THE COURT: WHAT?

* * *

[KNIGHT 136]

THE HOLDING CELL AND ONE WHEN YOU WERE IN THE BIG CELL THE SIZE OF THIS ROOM, EACH OF YOUR TIMES WOULD YOU DESCRIBE FOR

THE JURY PLEASE YOUR PHYSICAL CONDITION?
A. I WENT TO THE HOLDING CELL ONLY DURING THE DAY AND I WAS THERE ALL NIGHT. I DON'T KNOW WHAT TIME IT WAS, BUT LATE THAT NIGHT IT WAS REALLY COLD BECAUSE A WINDOW OVER THE CELL WAS OPEN. AND I KEPT YELLING SOMEBODY PLEASE BRING ME SOME MORE COVERS. AND THEY CAME SOONER OR LATER, BUT I GOT REALLY SICK.
Q. SICK HOW?
A. PHYSICALLY SICK. I WAS VOMITING. AND BLEEDING HEAVILY BECAUSE I NEVER HAD A BABY VAGINALLY. SO THEY CALLED THE AMBULANCE. AND THEY WANTED TO HANDCUFF ME AND SHANKLE ME.
Q. HANDCUFF YOU AND WHAT?
A. THEY WANTED TO HANDCUFF AND SHANKLE ME AND TAKE ME TO THE DOCTOR. AND I REFUSED THE TREATMENT. I REFUSED THE TREATMENT BECAUSE I DIDN'T WANT TO BE SEEN THAT WAY.
Q. AFTER THE TEN THOUSAND DOLLARS BAIL WAS POSTED - I'M SORRY, WAS SET, WERE YOU ABLE TO POST THAT BAIL?
A. YES, SIR.
Q. HOW?
A. MY PARENT AND MY RELATIVES.
Q. OKAY. YOU ANSWERED THE QUESTION I ASKED. WAS TEN THOUSAND DOLLARS PUT UP OR DID YOU USE A BAIL BONDSMAN?
A. YES, SIR, BAILS BONDMAN.

* * *

[KNIGHT 139]

Q. WHEN YOU LEFT, WERE YOU PROVIDED WITH A BOX THAT CONTAINED - WELL STRIKE THAT.
WERE YOU IN THE COURTROOM TODAY WHEN MS. BROWN TESTIFIED?
A. YES, SIR.
Q. DID YOU HEAR THE DESCRIPTION OF THE BOX THAT PEOPLE WERE DISCHARGED WITH?
A. YES.
Q. DID YOU GET ONE?
A. NO, SIR.
Q. WHEN YOU WERE ASKED TO SIGN A CONSENT FOR TESTING FOR YOUR SON BRANDON, WERE YOU TOLD THAT THE RESULTS OF THAT TEST WOULD BE TURNED OVER TO THE POLICE?
A. NO, SIR.
Q. OR TO THE SOLICITOR'S OFFICE?
A. NO, SIR.
MR. WHERRY: YOUR HONOR, I HAVE NO FURTHER QUESTIONS OF MS. KNIGHT.
THE COURT: CROSS EXAMINATION.
MS. SHOWERS: THANK YOU.
CROSS-EXAMINATION
BY MS. SHOWERS:
Q. MS. KNIGHT, YOU GOT PREGNANT WITH YOUR THIRD CHILD BRANDON IN EARLY 1989, CORRECT?
A. YES.

[KNIGHT 140]

Q. AND YOU WENT FOR PRENATAL CARE, CORRECT?
A. YES.
Q. BUT YOU DIDN'T GO UNTIL ABOUT YOUR FOURTH MONTH, ISN'T THAT ALSO TRUE?
A. BECAUSE I DIDN'T HAVE A PERIOD BUT EVERY FOUR MONTHS.
Q. BUT YOU DIDN'T GO UNTIL YOUR FOURTH MONTH, CORRECT?
A. YES.
Q. AFTER THAT POINT, YOU DIDN'T GO ON REGULAR INTERVALS, DID YOU?
A. I DON'T REMEMBER.
Q. YOU DIDN'T GO REGULARLY TO PRENATAL CARE, YOU DON'T REMEMBER TELLING ME THAT?
A. THAT I DID GO?
Q. DO YOU REMEMBER WHEN I TOOK YOUR DEPOSITION?
A. YES.
Q. DO YOU REMEMBER TELLING ME THAT YOU DIDN'T GO TO YOUR PRENATAL CARE VISITS ON A REGULAR BASIS?
A. AS OFTEN AS I COULD GET THERE WITHOUT TRANSPORTATION.
Q. WOULD YOUR TURN TO PAGE 147, PLEASE. DOWN AT THE BOTTOM OF THE PAGE, LINE 23,THE QUESTION WAS:
"DID YOU GET PRENATAL CARE WITH BRANDON?"
AND YOUR ANSWER WAS: "YEAH."
QUESTION: "REGULAR PRENATAL VISIT?" AND ON THE NEXT PAGE, WHAT WAS YOUR ANSWER?

A. "THEY WEREN'T REGULAR."

* * *

[KNIGHT 143]

A. I COULD HAVE.
Q. WOULD YOU LIKE ME TO REFRESH YOUR RECOLLECTION?
A. THAT'S UP TO YOU.
Q. PAGE 37, LINE 5, THE QUESTION: "WERE YOU AWARE THAT DRUG USE WHILE PREGNANT CAN BE HARMFUL?"
AND YOUR ANSWER WAS?
A. "I HAD HEARD SOMETHING ABOUT IT. NOT IN NO DETAILS."
Q. AND THAT WAS TRUE THEN ON THE 26TH DAY OF SEPTEMBER 1989; IS THAT RIGHT?
A. YES.
Q. AND BEFORE YOU WENT TO MUSC FOR TREATMENT, YOU HAD HEARD ABOUT THE POLICY OF ARRESTING WOMEN IF THEY TESTED POSITIVE FOR DRUGS, HAD YOU NOT?
A. I HEARD SOMETHING ABOUT IT.
Q. AND WHEN YOU WENT TO MUSC FOR TREATMENT, YOU SIGNED A CONSENT FORM, DIDN'T YOU?
A. I GUESS.
Q. IS THAT YOUR SIGNATURE ON THE BOTTOM OF THAT?
A. YES, IT IS.
Q. THANK YOU.
MS. SHOWERS: DEFENDANTS' EXHIBIT 51-A.
Q. (BY MS. SHOWERS, CONTINUING) AND YOU KNEW YOU WERE USING

DRUGS AND YOU WERE GOING TO MUSC FOR TREATMENT, BUT YOU NEVER ASKED ANY DOCTOR OR ANY NURSE THERE FOR HELP OR SUBSTANCE ABUSE REFERRAL OR ANY TYPE OF TREATMENT LIKE THAT, DID YOU?

[KNIGHT 144]

A. NO, I DIDN'T.
Q. AND THEN YOU DELIVERED BRANDON ON NOVEMBER 6, 1989, CORRECT?
A. NO.
Q. WHAT DAY WAS IT?
A. NOVEMBER 7TH.
Q. SORRY. AND WHEN BRANDON WAS BORN HE HAD SOME PROBLEMS AT BIRTH, DIDN'T HE?
MR. WHERRY: OBJECTION, RELEVANCE.
MS. SHOWERS: YOUR HONOR, THE REASON FOR THE TESTING
-
THE COURT: SAY WHAT?
MS. SHOWERS: THE REASON FOR THE DRUG TESTING.
MR. WHERRY: THEN COMPETENCE. SHE NEVER SAW THE CHILD.
THE COURT: SAY WHAT?
MR. WHERRY: THEN COMPETENCE, SHE NEVER SAW THE CHILD, SHE TESTIFIED, BEFORE BEING ARRESTED.
MS. SHOWERS: SHE HAD CONVERSATIONS WITH MEDICAL PERSONNEL.
THE COURT: SAY WHAT?

MS. SHOWERS: SHE SAID THAT SHE TALKED TO SHIRLEY BROWN.

THE COURT: WELL THE ONLY WAY THAT THE TESTIMONY SO FAR, FROM THIS WITNESS, WOULD SEEM TO INDICATE THAT SHE WAS

* * *

[KNIGHT 147]

WELL LET'S LEAVE IT AT THAT. YOU MAY PROCEED.

Q. (BY MS. SHOWERS, CONTINUING) MS. KNIGHT, YOU GOT SUBSTANCE ABUSE TREATMENT AT CHARLESTON COUNTY SUBSTANCE ABUSE?

A. YES.

Q. AND YOU SUCCESSFULLY COMPLETED THAT TREATMENT AND YOU'RE OFF DRUGS; IS THAT RIGHT?

A. YES.

MS. SHOWERS: I HAVE NOTHING FURTHER.

MR. WHERRY: NO REDIRECT, SIR.

THE COURT: ALL RIGHT, SIR.

THE WITNESS: JUDGE, CAN I SAY SOMETHING?

THE COURT: SAY WHAT? .

THE WITNESS: CAN I SAY SOMETHING?

THE COURT: NO. YOU'RE EXCUSED.

(TESTIMONY OF ELLEN KNIGHT CONCLUDED.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF CINDY LEGARE

[LEGARE 295]

(TESTIMONY EXCERPT OF CINDY LEGARE, 12-6-96.)

MS. PALTROW: I CALL CINDY LEGARE.

- - -

CINDY M. LEGARE PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. PALTROW:

Q. COULD YOU STATE YOUR NAME AND POSITION FOR THE JURY, PLEASE.

A. MY NAME IS CYNTHIA MOORE LEGARE, AND I WORK FOR THE CHARLESTON COUNTY SOLICITOR'S OFFICE. I'M AN INVESTIGATOR THERE.

Q. AND YOU WERE AN INVESTIGATOR THERE SINCE 1987; IS THAT CORRECT?

A. CORRECT.

Q. AND YOUR POSITION THERE INVOLVED AT SOME POINT AN INVOLVEMENT WITH THE INTERAGENCY POLICY, DIDN'T IT?

A. YES.

Q. AND THAT INVOLVEMENT CONCERNED TRACKING WOMEN WHO WERE IDENTIFIED AT MUSC AS POSITIVE FOR DRUGS; DIDN'T IT?

A. CORRECT.

Q. AND IN THAT POSITION YOU TRACKED WOMEN WHO TESTED POSITIVE FOR COCAINE WHETHER OR NOT THEY WERE ARRESTED, ISN'T THAT CORRECT?
A. CORRECT.
Q. AND YOU TRACKED THOSE WOMEN WHETHER OR NOT THEY GOT

[LEGARE 296]

TREATMENT?
A. CORRECT.
Q. AND YOU GOT THE INFORMATION ABOUT THOSE WOMEN FROM THE MEDICAL UNIVERSITY, DIDN'T YOU?
A. I CAN'T SAY IN EVERY INSTANCE IT WAS FROM THE MEDICAL UNIVERSITY BECAUSE I GOT INFORMATION FROM DIFFERENT AGENCIES AT SCAN MEETINGS SOMETIMES, AFTER SOMEBODY WAS ALREADY ARRESTED, WHICH THAT WOULD HAVE COME FROM THE POLICE.
Q. BUT WHEN YOU SAY THE SCAN MEETINGS, THAT WOULD HAVE BEEN MEETINGS AT THE MEDICAL UNIVERSITY; ISN'T THAT CORRECT?
A. AT THE MEDICAL UNIVERSITY. BUT PEOPLE FROM SUBSTANCE ABUSE WOULD BE THERE, DEPARTMENT OF SOCIAL SERVICES, MEDICAL UNIVERSITY, ME, THE POLICE OFFICER. AND THE INFORMATION WOULD HAVE COME FROM ALL OF THOSE PEOPLE, WHOEVER WAS WORKING WITH THE WOMEN.
Q. AND IT WAS IF A WOMEN WHO WAS BEING TREATED AT MUSC AND

HAD BEEN IDENTIFIED AS POSITIVE FOR DRUGS; ISN'T THAT CORRECT?

A. YES, I THINK MOST OF THOSE WOULD HAVE BEEN MEDICAL UNIVERSITY.

Q. AND YOUR PRIMARY CONTACT OUTSIDE OF THE SCAN MEETINGS WOULD HAVE BEEN SHIRLEY BROWN; IS THAT CORRECT?

A. MY PRIMARY CONTACT FOR WHAT?

Q. FOR INFORMATION ABOUT WHO TESTED POSITIVE UNDER THE POLICY?

[LEGARE 297]

A. ABOUT WHO TESTED POSITIVE. PROBABLY.

Q. AND THE PURPOSE OF COLLECTING THAT INFORMATION WAS TO -- ONE OF THE REASONS FOR COLLECTING THAT INFORMATION WAS TO FIND OUT WHETHER OR NOT A WOMAN WHO HAD TESTED POSITIVE WAS COMPLYING WITH SUBSTANCE ABUSE TREATMENT; ISN'T THAT TRUE?

A. YES.

Q. AND ONE OF THE REASONS FOR COLLECTING THAT INFORMATION WAS TO FIND OUT WHETHER A PARTICULAR PATIENT WHO -- YOU HAD IDENTIFIED AS YOU HAD BEEN INFORMED HAD TESTED POSITIVE, WHETHER SHE HAD BEEN ARRESTED; ISN'T THAT TRUE?

A. THAT WAS PART OF WHAT I TRACKED, YES, WHETHER THEY HAD BEEN ARRESTED.

Q. AND YOU WERE -- SOMETIMES GOT THE INFORMATION ABOUT WHETHER OR NOT THEY WERE ARRESTED AT SCAN MEETINGS AT THE MEDICAL UNIVERSITY; ISN'T THAT CORRECT?

A. I DON'T KNOW THAT I EVER GOT THAT INFORMATION. I WAS ALSO IN CLOSE CONTACT WITH DETECTIVE WARING, SHE WAS THE CITY POLICE OFFICER WHO WAS MY MAIN CONTACT ABOUT WHETHER OR NOT AN ARREST WAS MADE BECAUSE THAT WOULD HAVE BEEN HER JOB TO ARREST.

Q. AND SOME OF THE SCAN MEETINGS THEY DID, HOWEVER, DISCUSS WHETHER OR NOT A WOMEN HAD BEEN ARRESTED UNDER THE POLICY; ISN'T THAT CORRECT?

A. YES, BUT I WOULD ALSO HAVE KNOWN THEY WOULD HAVE BEEN ARRESTED BECAUSE THE CASE WOULD HAVE COME TO MY OFFICE,

[LEGARE 298]

GENERAL SESSIONS FOR GENERAL SESSIONS COURT.

Q. AND YOU KEPT YOUR LIST OF NAMES ON A YELLOW PAD, DIDN'T YOU?

A. A LEGAL PAD.

Q. AND CAN YOU TELL US WHO ASKED YOU TO KEEP THAT LIST?

A. CHARLIE CONDON.

Q. AND WHAT DID YOU DO WITH THE INFORMATION THAT WAS ON THAT LIST?

A. I WOULD KEEP IT. I WOULD UPDATE IT PERIODICALLY LIKE IF SOMEBODY HAD NOT BEEN ATTENDING SUBSTANCE ABUSE AND LATER ON STARTED ATTENDING SUBSTANCE ABUSE, I WOULD ADD THAT INFORMATION TO IT. AND EVERY SO OFTEN I WOULD GIVE IT TO CHARLIE CONDON AN UPDATED LIST WITH ALL OF THAT INFORMATION.

Q. AND THAT UPDATED LIST WOULD INCLUDE THE PATIENT'S NAME, WOULDN'T IT?

A. YES.

Q. AND IT WOULD INCLUDE INFORMATION ABOUT WHETHER THEY TESTED POSITIVE?

A. YES.

Q. AND MIGHT INCLUDE OTHER INFORMATION CONCERNING WHETHER OR NOT, FOR EXAMPLE, THEY HAD HAD AN ABORTION; ISN'T THAT TRUE?

MS. COMPANION: OBJECTION. 403 AND THERE IS NOTHING IN THE RECORD ABOUT THAT. NO FOUNDATION FOR THAT.

MS. PALTROW: MAY I RESPOND?

THE COURT: WELL, LET'S LOOK AT WHAT WE'RE DOING.

* * *

[LEGARE 302]

INTERAGENCY POLICY; ISN'T THAT CORRECT?

A. AS FAR AS I CAN REMEMBER, YES.

Q. DID YOU KEEP MORE OF THAN THE TWO DOCUMENTS THAT I HAVE

SHOWN YOU NOW THAT YOU HAVE IDENTIFIED THEM?
A. I THINK SO.
Q. AND DID YOU KEEP YOU -- DIDN'T KEEP THOSE IN A LOCKED FILE, DID YOU?
A. NO.
Q. AND THERE WEREN'T ANY WRITTEN PROCEDURES OR PROTOCOLS FOR INSURING THE SECURITY OF THOSE LISTS?
A. NOTHING WRITTEN, ALTHOUGH I HAVE A PRIVATE OFFICE AND THE SOLICITOR'S OFFICE ITSELF IS LOCKED.
Q. WASN'T ONE OF THE PURPOSES OF THE TRACKING THESE WOMEN WAS TO SEE IF THE POLICY WAS WORKING?
A. I THINK SO.
Q. AND AT SOME POINT DID YOU -- WERE YOU REPLACED BY SOMEBODY ELSE WHO TOOK OVER THIS FUNCTION FOR THE SOLICITOR'S OFFICE?
A. YES, I WAS.
Q. AND WHO WAS THAT?
A. GARDEN BLINCOW. I THINK THAT'S HOW YOU PRONOUNCE HER LAST NAME.
Q. AND SHE WAS HIRED SOLELY TO DO THAT JOB AT THE SOLICITOR'S OFFICE; ISN'T THAT CORRECT?
A. THAT WAS MY UNDERSTANDING.

* * *

[LEGARE 312]

THOSE REPORTS FROM MUSC, YOU KEPT THOSE AS PART OF YOUR JOB TRACKING, YOU KEPT SCAN REPORTS WRITTEN BY MEDICAL UNIVERSITY

PEOPLE AS PART OF YOUR JOB AT THE SOLICITOR'S OFFICE?

MS. COMPANION: OBJECTION, SHE IS CALLING FOR SPECULATION.

THE COURT: NO, I OVERRULE THE OBJECTION.

A. I CAN'T REALLY REMEMBER IF I KEPT THEM OR NOT. I MEAN, I KNOW I RECEIVED THEM. I DON'T KNOW IF I HANDED THEM IN TO MR. WHEN I HANDED IN THE SHEETS OR WHAT I DID WITH THEM.

BUT YOU DID RECEIVE THEM IN THE COURSE OF YOUR POSITION THERE TRACKING THEM; IS THAT CORRECT?

A. CORRECT.

MS. PALTROW: YOUR HONOR, I WOULD LIKE TO MOVE THIS INTO EVIDENCE.

MS. COMPANION: WE OBJECT.

THE COURT: I SUSTAIN THE OBJECTION. I MEAN, SHE HAS IN A GENERAL WAY IDENTIFIED THIS FORM AS SOMETHING THAT WAS A PRODUCT OF THE SCAN MEETING. AND SHE HAS SAID THAT SHE HAS RECEIVED SUCH FORMS, BUT SHE HAS NOT IDENTIFIED THESE FORMS AS BEING THOSE THAT SHE RECEIVED. AND SHE SAID THAT THAT IS NOT HER HANDWRITING THERE, WHICH WOULD NOT SEEM TO AUTHENTICATE IT SINCE IT'S NOT HER HANDWRITING. SO I DON'T THINK A PROPER FOUNDATION HAS BEEN LAID, SO I SUSTAIN THE OBJECTION.

Q. (BY MS. PALTROW, CONTINUING) THE SCAN REPORTS THAT YOU

[LEGARE 313]

RECEIVED AS PART OF YOUR JOB DIDN'T JUST INCLUDE INFORMATION ABOUT WHETHER OR NOT A WOMEN TESTED POSITIVE FOR DRUGS, DID IT?

A. NO, BECAUSE IT WAS NOT JUST FOR THAT PURPOSE OF -- OF TRACKING THE WOMEN FOR THIS PARTICULAR POLICY. BECAUSE AT THE SCAN MEETINGS WHEN WE WOULD GO, IT WOULD BE -- IT WOULD BE ALL KIND OF PROFESSIONALS WHO WERE WORKING WITH THESE WOMEN IN AN EFFORT TO HELP THEIR BABY. BUT EVEN BEFORE THAT PART OF THE MEETING BEGAN, THEY WOULD HAVE OTHER SCAN MEETINGS ABOUT OTHER CASES WITH THE -- DIFFERENT PROFESSIONALS MAYBE, BUT FROM THE SAME TYPE OF PLACE SHARING INFORMATION ABOUT OTHER ABUSE AND NEGLECT CASES.

Q. AND YOU WERE THERE FOR THE PART THAT WAS DISCUSSING COCAINE BABIES, WEREN'T YOU?

A. CORRECT.

Q. AND THE INFORMATION THAT WAS SHARED WITH YOU WAS MEDICAL INFORMATION, WASN'T IT?

A. YES.

Q. AND YOU DIDN'T HAVE A SEARCH WARRANT TO OBTAIN THAT INFORMATION?

A. DID I HAVE A SEARCH WARRANT? NO, I DIDN'T.
Q. YOU DIDN'T HAVE A COURT ORDER TO OBTAIN THAT INFORMATION, DID YOU?
A. NO, I DID NOT. BUT MAY I ANSWER MORE.
Q. NO THANK YOU.

* * *

[LEGARE 315]

COUNTY SUBSTANCE ABUSE CENTER FOR TREATMENT?
A. ON SOME CASES IT MAY HAVE BEEN CITY SCAN MEETINGS, BUT AT SOME; POINT IN MY INVOLVEMENT WITH THE POLICY I BEGAN RECEIVING LETTERS FROM SUBSTANCE ABUSE STATING WHETHER THEY WERE SUCCESSFUL OR UNSUCCESSFUL.
MS. COMPANION: ONE MOMENT, PLEASE, YOUR HONOR.
Q. (BY MS. COMPANION, CONTINUING) MS. LEGARE, WHAT WAS THE PURPOSE OF WHAT WE HAVE TALKED ABOUT TODAY AS THE INTERAGENCY POLICY FROM YOUR STANDPOINT AT THE SOLICITOR'S OFFICE?
A. WELL THE MEDICAL UNIVERSITY HAD - AS I KNOW IT, HAD COME TO. US SAYING THAT THEY HAD IDENTIFIED THAT THERE WAS A PROBLEM, AN EVER INCREASING PROBLEM WITH BABIES TESTING POSITIVE FOR COCAINE. AND IT WAS AN ATTEMPT TO TRY TO GET THESE WOMEN TO GET HELP SO THAT IT WOULD HELP THE BABIES NOT

BE TESTING POSITIVE FOR COCAINE.

MS. COMPANION: THANK YOU. NOTHING FURTHER.

MS. PALTROW: YOUR HONOR. NO REDIRECT.

THE COURT: OKAY. YOU'RE EXCUSED.

(TESTIMONY COMPLETED.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF ROBERT MALCOMB

[MALCOMB 750]

SERVED FOR TWO YEARS ON ACTIVE DUTY IN THE NAVY IN NORFOLK, CHARLESTON AND AT PARRIS ISLAND. I THEN WENT OFF ACTIVE DUTY AND KEPT MY RESERVE COMMISSION AND SERVED ABOARD A DESTROYER WITH SEA-BEE UNITS AND VARIOUS OTHER MEDICAL UNITS IN THE NAVY RESERVE. AND THEN IN 1984 I TRANSFERRED TO THE AIR FORCE RESERVE SO THAT I COULD GO TO FLIGHT SURGEON SCHOOL WITH THE AIR FORCE. AND SERVED SINCE WITH THE AIR FORCE AND SERVED IN THE CONFLICT IN PANAMA AND IN THE GULF. AND I HAVE 23 YEARS RESERVE AND ACTIVE DUTY TIME IN THE MILITARY. AND I SERVED PRIMARILY AS A GENERAL PRACTITIONER IN THE MILITARY RATHER THAN A PSYCHIATRIST.

Q. WHAT IS YOUR CURRENT POSITION IN THE MILITARY?

A. I'M A COMMANDING OFFICER OF THE 315TH MEDICAL CLINIC HERE AT CHARLESTON AT THE AIR FORCE BASE.

Q. AND YOU'RE MARRIED, SIR?

A. I'M MARRIED FOR 27 YEARS AND HAVE THREE CHILDREN.

Q. AND, DOCTOR, YOU HAVE BEEN IN THIS COMMUNITY PRACTICING SUBSTANCE ABUSE TREATMENT FOR APPROXIMATELY HOW MANY YEARS?
A. TWENTY YEARS.
Q. AND SINCE YOUR EXPERIENCE WITH SUBSTANCE ABUSE TREATMENT, HAVE YOU COME TO KNOW ANYTHING ABOUT THE INTERAGENCY POLICY?
A. YES, I HAVE.
Q. ARE YOU FAMILIAR WITH THAT?
A. I AM FAMILIAR WITH THAT POLICY.
Q. AND WERE YOU INVOLVED WITH THAT POLICY, DR. MALCOMB?

[MALCOMB 751]

A. I WAS FAMILIAR WITH ITS FORMULATION, BUT I WAS NOT PART OF THE COMMITTEE THAT WORKED OUT THAT POLICY, NO.
Q. DID YOU EVER HAVE AN OPPORTUNITY TO ADVISE ANY OF THE FOUNDERS OF THAT POLICY?
A. NO. THEY PERHAPS DISCUSSED IT WITH ME, BUT I DIDN'T PROVIDE ANY INPUT TO THAT ORIGINAL POLICY.
Q. AND SINCE IT WAS ENACTED OR IMPLEMENTED, DID YOU THEN BEGIN TO ADVISE THAT GROUP?
A. YES, I HAVE.
Q. AND CAN YOU TELL THE JURY ABOUT YOUR ADVICE TO THAT GROUP?
A. WELL, MY ADVICE ABOUT THAT POLICY IS THAT I BELIEVE AND SUPPORT THE NOTION OF COERCIVE TREATMENT OR THERAPY. AND I

THINK IT'S VALID, IT WORKS, IT'S WIDELY ACCEPTED THROUGHOUT THE COUNTRY. AND THERE IS A BODY OF SCIENTIFIC EVIDENCE TO SUPPORT THAT.

Q. CAN YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY COERCIVE TREATMENT?

A. I CAN IF I CAN GIVE A LITTLE BACKGROUND TO THIS. BEGINNING IN ADDICTION WORK IN THE 1930'S THERE WAS A NOTION, AND IT STILL PERSISTS TO SOME EXTENT TODAY, THAT PEOPLE HAD TO HIT ROCK BOTTOM IN THEIR LIFE TO BE MOTIVATED ENOUGH TO HAVE TREATMENT FOR ADDICTION. IN OTHER WORDS, A PERSON HAD TO BE HURT IN A SENSE OF PERHAPS LOSING THEIR HEALTH OR THEIR JOB OR THEIR MARRIAGE, AND THEN, ONLY THEN WOULD THEY REALIZE HOW

[MALCOMB 752]

DANGEROUS OR SERIOUS WAS THE ADDICTION AND THEN THEY WOULD SEEK HELP.

WELL, IN THE 1960'S AND '70'S PEOPLE WORKING IN THE AREA BEGAN QUESTIONING THAT PREMISE, BECAUSE THEY SAID, MY GOODNESS, BY THE TIME PEOPLE ENTER TREATMENT, IF THEY LIVE LONG ENOUGH, THEY WOULD HAVE ALREADY LOST THEIR MARRIAGES, THEIR HEALTH, THEIR JOBS, THEIR SPIRITUALITY, EVERYTHING WOULD

BE GONE. SO THAT PERHAPS IT WOULD BE POSSIBLE TO BRING PRESSURE TO BEAR ON PEOPLE SO THAT THEY WOULD SEEK TREATMENT BEFORE THEIR LIVES WERE DESTROYED.

WELL, THAT WAS THE WAY COERCIVE THERAPY WAS BORN. AND OF COURSE THIS HAS BEEN ALONG MANY ROUTES, WHATEVER - WHENEVER THERE IS LEVERAGE, WHENEVER THERE IS A MECHANISM FOR COERCION, WE USE IT IN THE SUBSTANCE ABUSE TREATMENT FIELD TO REACH OUT AND HELP ADDICTS BEFORE THEY ARE LOST TO EVERYTHING. FOR EXAMPLE FAMILIES GET TOGETHER AND WE USE FAMILY PRESSURES. WE USE JOB AND WORK AND VOCATIONAL PRESSURES. AND CERTAINLY WE USE LEGAL PRESSURES. AND OF COURSE MANY STATES THROUGHOUT THE COUNTRY HAVE WHOLE LEGAL AND COURT SYSTEMS THAT JUST SIMPLY DEAL WITH THE ISSUE OF DRUG ABUSE OFFENSES, SEEING THAT PEOPLE EITHER GO TO TREATMENT OR THAT THEY GO TO JAIL. SO THAT'S COERCIVE TREATMENT.

Q. DOCTOR, YOU HAVE EXPERIENCE WITH USING LEGAL SANCTIONS AS LEVERAGE INTO TREATMENT?

A. OH, YES.

[MALCOMB 753]

Q. CAN YOU EXPLAIN TO THE JURY THE VALIDITY OR EFFECTIVENESS OF THAT?

A. WELL IT'S HIGHLY EFFECTIVE. I SAW A YOUNG MAN TODAY WHO IS ADMITTED TO THE HOSPITAL YESTERDAY. HE HAS BEEN DENYING HIS PROBLEMS ALL ALONG. AND THE FIRST THING HE SAID TO ME TODAY ON ROUNDS IS, DOCTOR, WOULD YOU MIND CALLING MY PROBATION OFFICER. AND I SAID I WOULD BE DELIGHTED TO. AND I'LL BE HAPPY TO HELP YOU IN ANY WAY I CAN, BUT LET'S TALK ABOUT YOUR TREATMENT, TOO. LET'S TALK ABOUT THE THINGS THAT YOU NEED TO DO TO HELP GET WELL TO PREVENT THIS DESTRUCTION OF YOUR LIFE. THAT'S AN EXAMPLE OF COERCIVE THERAPY. AND IT WORKS.

Q. DOCTOR, HOW WOULD YOU CHARACTERIZE THE VALIDITY OF THE THEORY THAT THE INDIVIDUAL MUST WANT TREATMENT BEFORE IT WILL BE SUCCESSFUL?

A. I THINK THE THEORY IS WRONG. I THINK IT IS DESTRUCTIVE TO PEOPLES' LIVES AND IT ALLOWS PEOPLES' LIVES TO DETERIORATE TO THE POINT WHERE SOMETIMES THEY CAN'T RECOVER BEFORE THEY GET HELP.

Q. AND WHICH PATIENTS TEND TO ENTER TREATMENT VOLUNTARILY, DOCTOR?

A. WELL, I BELIEVE THAT ALL TREATMENT TO SOME EXTENT IS COERCIVE BECAUSE THERE IS ALWAYS OUTSIDE INFLUENCES. BUT IF

WE LOOK AT THE LITERATURE ON THE PEOPLE THAT ENTER TREATMENT VOLUNTARILY, MANY OF THEM HAVE ALREADY LOST MARRIAGES, HAVE

[MALCOMB 754]

LOST JOBS AND HAVE HAD HEALTH PROBLEMS SUCH AS LIVER DISEASE FROM DRINKING, AND STROKES FROM COCAINE ABUSE AND SO FORTH. SO PEOPLE THAT ENTER TREATMENT VOLUNTARILY TEND TO BE SICKER AND WITH MORE PROBLEMS.

Q. AND, DOCTOR, CAN YOU EXPLAIN OR DESCRIBE THE BENEFITS OF COERCIVE TREATMENT?

A. WELL, THE BENEFITS OF COERCIVE TREATMENT IS THAT IT WORKS, IT'S EFFECTIVE. PEOPLE REMAIN IN TREATMENT LONGER. THEY ENTER TREATMENT AT A YOUNGER AGE. THEY HAVE LESS DESTRUCTION TO THEIR FAMILY LIVES AND THEIR HEALTH BEFORE THEY ENTER TREATMENT. THEY OFTEN STILL HAVE PRESERVATION OF THEIR JOB IF THEY WERE EMPLOYED.

Q. DOCTOR, WHAT PROGRAMS ARE AVAILABLE AT THE MEDICAL UNIVERSITY TO TREAT PREGNANT WOMEN?

MS. PALTROW: OBJECTION, YOUR HONOR. THE TIME FRAME HAS TO BE EXPLAINED. IT'S GOING TO BE MISLEADING AND PREJUDICIAL OTHERWISE.

MS. SHOWERS: THE AVAILABILITY OF SUBSTANCE ABUSE

TREATMENT HAS BEEN THE ISSUE. IF SHE WANTS TO BRING OUT SOMETHING ELSE ON CROSS-EXAMINATION HE CAN CERTAINLY TELL US WHAT IS AVAILABLE.

THE COURT: WELL SHE MENTIONED A PARTICULAR TIME FRAME SHOULD BE ATTACHED TO IT. I'M INCLINED TO AGREE WITH HER.

Q. (BY MS. SHOWERS, CONTINUING) DR. MALCOMB, CURRENTLY ARE

[MALCOMB 755]

THERE PROGRAMS AVAILABLE AT THE MEDICAL UNIVERSITY TO TREAT PREGNANT WOMEN?

A. YES.

THE COURT: AGAIN, I DON'T KNOW THAT THAT IS RELEVANT. NOW, IF HE IS INVOLVED IN THEM POSSIBLY IT COULD HAVE SOMETHING TO DO WITH HIS QUALIFICATIONS, BUT I DON'T THINK IT'S OFFERED FOR THAT AND I DON'T THINK IT'S RELEVANT.

Q. (BY MS. SHOWERS, CONTINUING) BETWEEN THE YEAR OF 1989 AND 1994, DR. MALCOMB, WERE THERE FACILITIES OR TREATMENT PROGRAMS AVAILABLE AT THE MEDICAL UNIVERSITY FOR PREGNANT WOMEN?

A. YES, THERE WERE.

Q. CAN YOU DESCRIBE THOSE FACILITIES TO THE JURY, PLEASE?

A. WELL THERE WERE A SPECTRUM OF PROGRAMS, SOME INVOLVED

INPATIENT TREATMENT AND SOME INVOLVED OUTPATIENT TREATMENT. INPATIENT TREATMENT WOULD, OF COURSE, BE THE PATIENT WOULD BE ADMITTED TO THE HOSPITAL, WOULD BE EVALUATED BY A TREATMENT TEAM OF DOCTORS, NURSES, PSYCHOLOGISTS AND SOCIAL WORKERS AND OTHER PERSONNEL. A TREATMENT PLAN WOULD BE DRAWN UP AND THAT TREATMENT WOULD BE PURSUED IN THE HOSPITAL. AND THAT TREATMENT MIGHT CONSIST OF VARIOUS MEDICAL TREATMENTS, PSYCHOLOGICAL TREATMENT, COUNSELING AND ATTENDANCE AT VARIOUS, WHAT WE CALL SELF-HELP GROUPS OR 12 STEPS, SUCH AS ALCOHOLICS ANONYMOUS OR NARCOTICS ANONYMOUS.

ALSO IN ADDITION TO INPATIENT TREATMENT, OUTPATIENT

[MALCOMB 756]

TREATMENTS WOULD CONSIST OF WHAT WE CALL INTENSIVE OUTPATIENT TREATMENT WHERE THE PERSON, AND THIS GOES BY A VARIETY OF NAMES, AND I APOLOGIZE THAT'S KIND OF CONFUSING, BUT INTENSIVE OUTPATIENT TREATMENT OR SO-CALLED DAY TREATMENT IS WHEN THE PATIENT GOES AND SPENDS THE ENTIRE DAY AT THE HOSPITAL PARTICIPATING IN SOME OF THE SIMILAR ACTIVITIES I HAVE JUST DESCRIBED AND THEN THEY GO HOME TO THEIR RESIDENCE AT NIGHT OR

PERHAPS A HALFWAY HOUSE AT NIGHT. AND THEN REGULAR OUTPATIENT THERAPY MIGHT JUST - AND THAT, BY THE WAY, COULD BE ANYWHERE FROM FOUR TO SIX HOURS A DAY FOR FOUR TO FIVE DAYS A WEEK. AND THEN REGULAR OUTPATIENT TREATMENT IS MUCH LIKE ANY OTHER TYPE OF MEDICAL OUTPATIENT TREATMENT, A PERSON MIGHT COME IN ONCE OR TWICE A WEEK AND SEE A PSYCHIATRIST OR PSYCHOLOGIST OR SOCIAL WORKER OR ALCOHOL OR ADDICTION COUNSELOR. AND THE LENGTH AND DURATION WOULD DEPEND ON THE NATURE OF THE PERSON'S PROBLEM, THE LENGTH AND SEVERITY.

Q. ARE YOU FAMILIAR WITH WHAT SUBSTANCE ABUSE FACILITIES WERE AVAILABLE BETWEEN THE YEAR 1989 AND 1992?

A. YES.

Q. AND THE SUBSTANCE ABUSE TREATMENT FACILITIES THAT WERE UTILIZED IN THE INTERAGENCY POLICY, WERE THEY APPROPRIATE?

A. YES, THEY WERE.

Q. THE ONES THAT THE WOMEN GOT REFERRED TO?

A. YES.

[MALCOMB 757]

Q. AND, DOCTOR, IN YOUR EXPERIENCE AS A SUBSTANCE ABUSE EXPERT, WAS THE INTERAGENCY POLICY AN APPROPRIATE MECHANISM TO GET WOMEN INTO TREATMENT?

A. YES, IT WAS.
MS. SHOWERS: NOTHING FURTHER.
THE COURT: CROSS-EXAMINATION.
MS. PALTROW: THANK YOU.

CROSS-EXAMINATION

BY MS. PALTROW:
Q. DR. MALCOMB, YOU TESTIFIED YOU WEREN'T INVOLVED IN THE INITIAL FORMULATION OF THE POLICY; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. AND YOU WOULD HAVE BEEN ONE OF THE PEOPLE AT THE UNIVERSITY, OR ASSOCIATED WITH THE UNIVERSITY WITH ACTUAL EXPERTISE IN SUBSTANCE ABUSE AT THE TIME?
A. AT THE TIME I WAS MEDICAL DIRECTOR OF FENWICK HALL HOSPITAL, SO MY DUTIES AT THE UNIVERSITY WERE CURTAILED AND I WAS NOT, IN GENERAL, AVAILABLE AT THE UNIVERSITY ON A DAY-TO-DAY BASIS.
Q. BUT YOU WERE THERE SOMETIMES WEREN'T YOU?
A. I WAS THERE SOMETIMES.
Q. AND YOU HAD AN ASSOCIATION WITH THE MEDICAL UNIVERSITY AT THAT POINT DIDN'T YOU?
A. I DID INDEED.
Q. NOW YOU SAID THAT - ISN'T IT CORRECT THAT THERE ARE

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF ROGER NEWMAN

[NEWMAN 155]

(TESTIMONY EXCERPT OF DR. ROGER NEWMAN.)

MR. WHERRY: CALL DR. ROGER NEWMAN, PLEASE, YOUR HONOR.

- - -

ROGER NEWMAN, M.D., PLF. WITNESS, SWORN

DIRECT EXAMINATION

BY MR. WHERRY:

Q. DR. NEWMAN, YOU'RE AN EMPLOYEE OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. YES, I AM.

Q. YOU HAVE BEEN AN EMPLOYEE THERE SINCE AT LEAST THE END OF THE '80'S?

A. 1986.

Q. DOCTOR, YOU ARE ALSO, IN ADDITION TO BEING AN EMPLOYEE OF THE MEDICAL UNIVERSITY, YOU'RE A MEMBER OF THE FACULTY; IS THAT CORRECT?

A. YES, I AM.

Q. AND, DOCTOR, YOU HAVE PRIVILEGES AT THE HOSPITAL; IS THAT FAIR?

A. YES, SIR.

Q. DOCTOR, WOULD YOU EXPLAIN TO THE JURY PLEASE, JUST VERY BRIEFLY, THE DIFFERENCE BETWEEN BEING ON THE FACULTY AND HAVING STAFF PRIVILEGES?
A. I'M NOT SURE I KNOW EXACTLY HOW TO DO THAT.
Q. LET ME HELP YOU.

* * *

[NEWMAN 157]

Q. YOUR FIELD OF SPECIALTY IS WHAT?
A. I'M - I. HAVE BOARDS IN OBSTETRICS AND GYNECOLOGY AND ALSO IN THE SUB-SPECIALTY OF MATERNAL FETAL MEDICINE.
Q. NOW, DOCTOR, YOU WERE A PARTICIPANT IN THE MEETINGS EARLY ON THAT EVENTUALLY RESULTED IN THE INTERAGENCY POLICY AS WE NOW KNOW IT, FAIR?
A. I ATTENDED THE SECOND MEETING. MY UNDERSTANDING I WAS AT THE SECOND MEETING REGARDING THIS POLICY AND AS A MEMBER OF THE DEPARTMENT OF OBSTETRICS AND GYNECOLOGY. AND AS MEMBER OF THE MATERNAL FETAL MEDICINE DIVISION WE WERE INVOLVED IN THAT POLICY, IMPLEMENTATION.
Q. DOCTOR, ONE OF THE PRELIMINARY THINGS THAT I WOULD LIKE TO DISCUSS WITH YOU, IF YOU WOULD BEAR WITH ME JUST A MOMENT. THE POLICY WAS, IN CONCEPT, TO IDENTIFY SUBSTANCE-ABUSING PREGNANT WOMEN IN PART, FAIR?
A. IN PART, YES, SIR.

Q. AND THAT WOULD INVOLVE THE DIAGNOSIS, WOULD IT NOT, IN PART THAT THE WOMAN WAS ABUSING CONTROLLED SUBSTANCES WHILE PREGNANT?
A. YES, SIR.
Q. TWO-PART DIAGNOSIS, ISN'T IT? FIRST, PREGNANCY. AND, SECOND, SUBSTANCE ABUSE?
A. YES, SIR.
Q. AND AFTER THAT DIAGNOSIS, PART OF THE POLICY WAS AT LEAST IN PART TO COUNSEL THE WOMEN, THE PATIENT ON THE FACT THAT

[NEWMAN 158]

THIS IS KIND OF A BAD THING TO DO?
A. WELL, AS PART OF THE POLICY ALL WOMEN ATTENDING THE PRENATAL CLINICS ARE - RECEIVING. OBSTETRICAL CARE AT THE UNIVERSITY RECEIVED COUNSELING REGARDING THE HAZARDS OF DRUG ABUSE AND PREGNANCY. THOSE PATIENTS WHO WERE IDENTIFIED AS HAVING A POSITIVE DRUG ABUSE SCREEN WHICH WERE DONE IN THE CONTEXT OF CLINICAL SITUATIONS ASSOCIATED WITH DRUG ABUSE, THOSE PATIENTS THEN RECEIVED FURTHER COUNSELING FROM THE STAFF AT THE UNIVERSITY AND WERE REFERRED TO SUBSTANCE ABUSE TREATMENT.
Q. SO THE NEXT STEP IN THE POLICY, FIRST DIAGNOSIS, THAT TWO-PRONGED DIAGNOSIS, THEN COUNSELING, THEN REFERRAL, FAIR?

A. YES, SIR.
Q. AND REFERRAL FOR SUBSTANCE ABUSE TREATMENT?
A. YES, SIR.
Q. OKAY. AND THAT WAS THE SUBSTANTIAL PART OF THE INTERAGENCY POLICY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. THAT WAS PART OF IT. I DON'T KNOW THAT I COULD - I DON'T KNOW WHAT SUBSTANTIAL MEANS. I MEAN, THERE WERE OTHER PARTS THAT WERE INVOLVED IN THE POLICY.
Q. THAT WERE NOT DIAGNOSIS, COUNSELING AND REFERRAL?
A. THAT'S CORRECT.
Q. WERE YOU TREATING SUBSTANCE-ABUSING WOMEN?
A. NO, WE WERE TREATING THEIR PREGNANCY. BUT THE OTHER

[NEWMAN 159]

COMPONENT OF THE POLICY WAS AT THE TIME THAT THE WOMEN TESTED POSITIVE FOR DRUG ABUSE, IN ADDITION TO THE COUNSELING AND REFERRALS, THEY WERE ALSO MADE AWARE THAT THEY HAD VIOLATED SOUTH CAROLINA LAW, WHAT COMPONENTS OF THAT LAW THEY HAD VIOLATED, AND THAT IF THERE WAS FURTHER DRUG ABUSE IN PREGNANCY, THEY WERE SUBJECT TO POTENTIAL ARRESTS.
Q. DOCTOR, I PROMISE YOU I WILL GET TO THAT AREA, BUT I

THINK YOU'RE RIGHT. THERE WAS ANOTHER COMPONENT WHICH WAS THE FORENSIC COMPONENT, RIGHT? THE PART THAT DEALT WITH LAW ENFORCEMENT?

A. YES, SIR.

Q. SO THAT PART OF THE POLICY OF THE MEDICAL UNIVERSITY IN ACCOMPLISHING THEIR PURPOSES WAS, IF THE WOMEN WERE NOT COMPLIANT, THE CHARLESTON CITY POLICE AND THE SOLICITOR'S OFFICE WOULD BECOME INVOLVED AND RESTRAIN THEIR LIBERTY UNTIL THEY COMPLY, FAIR?

A. THE ISSUE OF COMPLIANCE WITH THE DRUG, ABUSE TREATMENT WAS SOMETHING THAT WAS CERTAINLY BEING - WAS BEING PURSUED, BUT I SUSPECT THAT THE MAJORITY OF PATIENTS WHO WERE SUBSEQUENTLY ARRESTED WERE ARRESTED FOR TESTING POSITIVE AGAIN.

Q. DOCTOR, LET ME SHOW YOU WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT NUMBER 63 FOR IDENTIFICATION. AND, DOCTOR, ASK YOU WHETHER OR NOT - WITHDRAW THAT QUESTION. THAT IS, SIR, A LETTER THAT YOU WROTE, ISN'T IT?

A. YES, SIR, IT IS.

[NEWMAN 160]

Q. AND WHAT IS THE DATE OF THAT LETTER, DOCTOR?

A. DECEMBER 13, 1990.

Q. SO, THAT WAS ALMOST SIX YEARS AGO TODAY, NEXT WEEK? IT

WAS SIX YEARS AGO NEXT WEEK?
A. YES, SIR.
Q. DOCTOR, THE PURPOSE OF WRITING THAT LETTER WAS TO - OR THAT MEMO WAS TO COMMUNICATE WITH THE OB/GYN RESIDENTS UNDER YOUR SUPERVISION AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. NO, SIR.
Q. OKAY. WHAT WAS THE PURPOSE OF IT?
A. THERE WAS A - THE SOUTH CAROLINA COUNCIL ON MATERNAL, INFANT, CHILD HEALTH, REFERRED TO AS THE MICH COUNCIL, WAS HAVING HEARINGS IN COLUMBIA REGARDING A PHYSICIAN PAPER THAT THEY HAD PUT OUT REGARDING THE PROBLEMS OF DRUG ABUSE IN PREGNANCY AND THEIR POSITION REGARDING HOW TO DEAL WITH IT.
AS A RESULT OF THESE HEARINGS - WELL, INDIVIDUALS WERE INVITED TO COME TESTIFY AT THIS HEARING. I WAS UNABLE TO GO FOR OTHER RESPONSIBILITIES, SO INSTEAD I WROTE A LETTER TO THE COMMITTEE TO EXPRESS MY OPINIONS ABOUT THE ISSUE OF SUBSTANCE ABUSE AND PREGNANCY, ITS SERIOUSNESS EFFECTS ON THE STATE AND THE POLICY THAT WE WERE UNDERTAKING AT THE UNIVERSITY AND WHY I THOUGHT THEY WERE REASONABLE AND EFFECTIVE.
Q. YOU'RE QUITE CORRECT, I SHOWED YOU A DOCUMENT DIFFERENT

THAN I THOUGHT I WAS SHOWING YOU, BUT LET'S TALK ABOUT THIS

* * *

[NEWMAN 167]

CONFIDENTIALITY STATUTE IS NOT NECESSARILY THE SAME THING AS A VIOLATION OF A DOCTOR-PATIENT RELATIONSHIP. AND I DON'T WANT YOU TO CONFUSE THE TWO.

COUNSEL FOR THE PLAINTIFF ADVISES ME THAT THEY'RE OFFERING THIS EVIDENCE AS EVIDENCE OF RACE DISCRIMINATION, NOT AS EVIDENCE OF THE VIOLATION OF THE DOCTOR-PATIENT RELATIONSHIP, BECAUSE IT'S NOT ALLEGED THAT THAT IS THE BASIS UPON WHICH THE PLAINTIFFS' WISH TO RECOVER. SO, BEAR IN MIND THAT THIS IS COMING IN, AND EVEN THOUGH IT SAYS THAT HE IS BEING TROUBLED BY THE FACT THAT THERE MAY BE A VIOLATION OF THE DOCTOR-PATIENT RELATIONSHIP, IT'S NOT` BEING BROUGHT IN TO SHOW THAT IN AND OF ITSELF, IT'S BROUGHT IN TO SHOW THAT THAT, THE ALLEGED VIOLATION OF THE DOCTOR-PATIENT RELATIONSHIP IS EVIDENCE OF RACE DISCRIMINATION. OKAY.

IS THAT A FAIR STATEMENT?

MR. WHERRY: YES, SIR.

THE COURT: WITH THAT LIMITING INSTRUCTION, THE OBJECTION IS OVERRULED.

MR. WHERRY: THANK YOU

DEPUTY CLERK: PLAINTIFF'S EXHIBIT NUMBER 63.
Q. (BY MR. WHERRY, CONTINUING) DOCTOR, SHOWING YOU AGAIN PLAINTIFF'S EXHIBIT NUMBER 63, REFERRING TO THE SECOND PAGE, THE RELEVANT PARAGRAPH - AND THIS IS A LETTER WRITTEN BY YOU TO THE STATE COUNCIL OF MATERNAL INFANT AND CHILD HEALTH?
A. YES, SIR.

* * *

[NEWMAN 169]

MR. WHERRY: SENTENCE BY SENTENCE AND ASK HIM A QUESTION.
Q. (BY MR. WHERRY CONTINUING) YOU SAY, DON'T YOU, "AS A PHYSICIAN AND MEDICAL ADVISOR, I HAVE BEEN SIGNIFICANTLY TROUBLED BY THE CONSIDERATION THAT THIS PROGRAM VIOLATES THE PHSYICIAN-PATIENT RELATIONSHIP AND PATIENT CONFIDENTIALITY." THAT'S THE FIRST SENTENCE YOU WROTE?
A. YES, SIR.
Q. NOW, DOCTOR, THAT MEANS THAT AT LEAST IN PART THAT IT WAS A CHANGE FROM, WHAT YOU HAD DONE BEFORE AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, ISN'T THAT SO, THIS POLICY WAS?
A. YES, SIR. IN SOME WAYS. THERE WERE PARTS OF IT THAT WERE CERTAINLY DIFFERENT.
Q. INSOFAR AS IT IMPACTED, FROM YOUR PERSPECTIVE, ON THE

PHYSICIAN-PATIENT RELATIONSHIP AND PATIENT CONFIDENTIALITY, IT WAS A CHANGE IN WHAT HAD HAPPENED BEFORE, AND THAT CONCERNED YOU?

A. YES, IT WAS A CHANGE IN THAT IT WAS - IT WAS NOT A CHANGE IN THE FACT THAT DRUG TESTING HAD BEEN GOING ON IN CLINICAL SITUATIONS REQUIRING IT, WE HAD DONE THAT.

Q. SURE.

A. YES.

Q. AND THAT'S WHAT YOU SAY IN YOUR NEXT SENTENCE?

A. RIGHT.

Q. IN YOUR NEXT SENTENCE YOU SAY, "I THINK I AGREE THAT THIS

[NEWMAN 170]

VIOLATION IS INHERENT IN THE REPORTING OF DRUG ABUSE BY PREGNANT WOMEN"?

A. YES, SIR.

Q. SO, WHAT YOU WERE SAYING IS, THAT IN THE PAST THERE HAD BEEN SOME REPORTING OF DRUG ABUSE BY PREGNANT WOMEN, TO - AND NOW THIS IS NOT WHAT YOU SAID IN YOUR LETTER - TO DSS, RIGHT?

A. YES, SIR.

Q. BUT THE CHANGE THAT YOU'RE REFERRING TO THAT CONCERNS YOU IS NOW INVOLVING THE POLICE AND THE COUNTY SOLICITOR?

A. YES, SIR.

Q. NOW THE NEXT SENTENCE IN THAT PARAGRAPH, DOCTOR, SAYS,

"HOWEVER, WITH THE CONTINUING EROSION OF THE PHYSICIAN-PATIENT RELATIONSHIP WHICH IS EVIDENCED IN SO MANY WAYS, THIS MAY BECOME A MOOT POINT."

MR. HOOD: HE SAID IN MANY WAYS.

MR. WHERRY: WHAT DID I SAY?

MR. HOOD: SO.

Q. (BY MR. WHERRY, CONTINUING) "IN MANY WAYS THIS MAY BECOME A MOOT POINT"?

MR. HOOD: MAY BE.

MR. WHERRY: "MAY BE A MOOT POINT."

Q. (BY MR. WHERRY, CONTINUING) DOCTOR, THAT MEANS IN YOUR MIND AND WHAT YOU WERE WRITING TO THIS BODY, THAT ALTHOUGH YOU HAD THESE CONCERNS ABOUT THE CHANGE IN THE WAY THINGS WERE DONE, YOU WERE WILLING, IN YOUR MIND BECAUSE OF CHANGE IN

[NEWMAN 171]

SOCIETAL MORES TO OVERLOOK THAT CONCERN, FAIR?

A. I DON'T THINK I WAS PROPOSING THAT IT BE OVERLOOKED, I JUST WANTED THAT CONCERN TO BE PUT IN CONTEXT WHILE ANYTIME PATIENT INFORMATION WOULD BE GIVEN TO ANYONE ELSE OTHER THAN THE PHYSICIAN, THAT'S IN SOME DEGREE A VIOLATION OR THAT DOES NOT KEEP THAT INFORMATION CONFIDENTIAL. HOWEVER, THAT - THAT

LEVEL OF CONFIDENTIALITY NO LONGER EXISTS LEGALLY IN MANY, MANY WAYS , AND SO I WAS TRYING TO PUT THAT CONCERN IN CONTEXT FOR THE PEOPLE AT THE MICH WHO WERE EVALUATING THIS POLICY.

Q. YOU, OF COURSE, SIR, HAVE NO EDUCATION IN THE LAW, DO YOU?

A. NO, SIR.

Q. AND FOR THAT, SIR, YOU'RE FAIRLY FORTUNATE. YOU DO NOT HOLD YOURSELF OUT TO BE A MEDICAL ETHICIST, DO YOU?

A. NO, SIR, I DO NOT.

Q. THE MEDICAL UNIVERSITY OF SOUTH CAROLINA HAS A MEDICAL ETHICIST, DON'T THEY?

A. THEY HAVE ETHICISTS, YES.

Q. WHO IS THE MEDICAL ETHICIST AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. THEY HAVE A MEDICAL ETHICS COMMITTEE AND OF THE PEOPLE ON THAT COMMITTEE, WHO EXACTLY CARRIES THE TITLE OF MEDICAL ETHICIST, I'M NOT SURE.

Q. YOU KNOW MARY FAITH MARSHAL?

A. YES, I DO.

* * *

[NEWMAN 175]

SPECIFICALLY SAYS I WOULD HAVE TO LOOK AT IT, I CANNOT GIVE YOU THE SPECIFIC WORDING. WHAT I WAS GOING TO GO ON TO SAY WAS THAT -

MR. WHERRY: AND, YOUR HONOR, THAT'S WHERE I STOPPED HIM.

THE COURT: THAT'S WHERE I'M GOING TO LET HIM GO. THAT'S WHERE YOU DIDN'T HAVE ANY RIGHT TO STOP HIM.

THE WITNESS: WHAT I WAS GOING TO GO ON TO SAY WAS THAT REGARDLESS OF WHAT THE PATIENT INFORMED CONSENT SAYS, WE, THE REPORTING OF THAT INFORMATION TO THE POLICE OR SOLICITOR WAS REQUIRED OF US BY SOUTH CAROLINA LAW, WHICH WE WERE TOLD SUPERVENED.

AND AS I WENT ON IN THIS LETTER, JUST A LINE OR TWO DOWN FROM WHERE THE. COUNSELOR STOPPED ASKING ME, IT SAYS "MOST IMPORTANTLY WOULD BE THE LAWS REQUIRING THE REPORTING OF EVIDENCE OF CHILD ABUSE AS AN EXCELLENT EXAMPLE AS HOW SOCIETAL NEEDS TO PROTECT THE DEFENSELESS, ASSUMES GREATER IMPORTANCE THAN THE CONCEPT OF THE DOCTOR-PATIENT RELATIONSHIP AND THE CONFIDENTIALITY. AS YOU'RE AWARE THE REPORTING OF SUCH CHILD ABUSE IS CONSIDERED MANDATORY TO SOUTH CAROLINA LAW."

THE COURT: WHAT HE SAID IS BASICALLY WHAT HE THINKS THE LAW PROVIDES. AND TO THAT EXTENT AND TO THAT EXTENT ALONE YOU CAN CONSIDER WHAT HE SAID.

NOW, AT SOME POINT IN TIME I BELIEVE IT'S GOING TO

[NEWMAN 176]

BECOME NECESSARY FOR ME TO TELL YOU WHAT THE LAW IS. AND THAT MAY RELATE TO THIS REPORTING STATUTE THAT HE SAID WHAT HE THINKS IT MEANS. NOW, WHEN THAT TIME COMES, IF IT DOES COME, THEN WHAT I TELL YOU IS THE LAW. BUT IT MAY BE THAT WHAT HE THINKS THE STATUTE SAYS IS RELEVANT TO SOME ISSUE IN THIS CASE. AND BECAUSE IT MAY BE RELEVANT TO SOME ISSUE, I'M GOING TO LET YOU HEAR WHAT HE SAYS HE THINKS IT REQUIRES OVER COUNSEL'S OBJECTION.

OKAY. YOU MAY PROCEED.

Q. (BY MR. WHERRY, CONTINUING) DOCTOR, IN THE NEXT TO THE LAST PARAGRAPH IN YOUR LETTER YOU TALK ABOUT THE POOR QUALITY OF AND THE NEED FOR INCREASED SUBSTANCE ABUSE TREATMENT IN THE CHARLESTON AREA, FAIR?

A. LET ME JUST READ THAT PARAGRAPH AGAIN. YES, SIR. I STATE THAT IN ONE SENTENCE.

Q. SIR, MY QUESTION WAS SIMPLY, I DIDN'T ASK YOU TO READ IT OR TO STATE IT AGAIN, IT WAS SIMPLY THAT IT EXPRESSED YOUR CONCERN ABOUT THE AVAILABLE SUBSTANCE ABUSE TREATMENT FACILITIES IN THE WHOLE STATE WITH THE CHARLESTON AREA, FAIR?

A. YES, SIR.
Q. OKAY. AND THAT WAS REFERRING TO THE TIME AT WHICH THE POLICY WAS ADOPTED GENERALLY?
A. YES, SIR
Q. AND IT'S TRUE, DOCTOR, ISN'T IT, THAT ONE OF THE MOTIVATIONS BEHIND THE ADOPTION OF THE POLICY WAS TO LEVERAGE

* * *

[NEWMAN 178]

WOULDN'T HAVE BEEN NECESSARY THEN TO HAVE THE POLICY, AT LEAST INSOFAR AS A PURPOSE OF IT WAS TO LEVERAGE DSS INTO BEING MORE RESPONSIVE, FAIR?
A. NO, SIR, I DON'T AGREE WITH THAT.
Q. LET ME REFER YOU NOW TO A DOCUMENT MARKED PLAINTIFF'S 19 FOR IDENTIFICATION AND ASK YOU TO LOOK AT THAT.
A. YES, SIR.
Q. THAT, SIR. THAT I MISTAKENLY REFERRED TO EARLIER AS A MEMO WRITTEN TO. YOU TO THE OB/GYN RESIDENTS AT THE MEDICAL UNIVERSITY; IS THAT RIGHT?
A. YES, SIR.
Q. AND THAT WAS WRITTEN BY YOU AS THE SUPERVISOR OF THESE RESIDENTS?
A. AS ONE OF THEIR SUPERVISORS.
Q. AND RESIDENTS ARE PEOPLE WHO ARE EITHER ROTATING THROUGH THE OB/GYN SERVICE OR HAVE CHOSEN TO DO AN OB/GYN RESIDENCY AT MUSC, FAIR?

A. YES, SIR.
Q. AND IN FACT WHAT THEY'RE REALLY DOING IS FINISHING THEIR EDUCATION TO BE DOCTORS?
A. THEY ARE ALREADY PHYSICIANS, THEY ARE INVOLVED IN A FOUR-YEAR SPECIALTY TRAINING PROGRAM.
Q. SO THEY'RE FINISHING THEIR EDUCATION AS DOCTORS?
A. YOU COULD SAY THAT.
Q. ALTHOUGH WHEN YOU GRADUATE FROM MEDICAL SCHOOL, DOCTOR

* * *

[NEWMAN 180]

Q. AND THE QUESTIONS WERE CONCERNING THE INTERAGENCY POLICY, WE HAVE COME TO KNOW AS M-7?
A. YES, SIR.
Q. NOW, DOCTOR, ONE OF THE CONCERNS THAT WERE EXPRESSED AND THAT YOU DEALT WITH IN THIS MEMO, WAS A PERCEPTION THAT THE POLICY, A, WAS PUNITIVE, FAIR?
A. COULD YOU DIRECT ME TO THE POINT IN THE LETTER THAT YOU'RE REFERRING TO? JUST TO SAVE ME TIME FROM READING IT ALL OVER AGAIN.
Q. I WILL TRY. YES, I CAN. IF YOU WILL GO TO PAGE 3 OF THE LETTER THE LAST PARAGRAPH I BELIEVE ON PAGE 3. YOU TALK ABOUT THE GOALS OF THE DEPARTMENT; IS THAT CORRECT?
A. YES, SIR.

Q. AND THE GOALS OF THE DEPARTMENT BEING NOT ONLY THE UNIVERSITY'S GOALS, THE OBSTETRICAL AND GYNECOLOGICAL GOALS - I'M COMING TO THE PUNITIVE PART, BUT THEY'RE JOINT GOALS WITH THE POLICE DEPARTMENT AND SOLICITOR'S OFFICE, DON'T YOU?

A. YES, SIR.

Q. SO YOU WERE EXPLAINING TO THE RESIDENTS THAT THIS WAS A UNIFIED PROGRAM, IT WAS A PROGRAM THAT RESULTED FROM THE AGREEMENT OF THREE ENTITIES, IF YOU WILL? THE HOSPITAL?

THE COURT: I THINK THE LETTER SPEAKS FOR ITSELF. THINK YOU'RE ARGUING THE LETTER. THE LETTER SPEAKS FOR ITSELF. AND WHAT IT SAYS TO THE RESIDENTS IT SAYS TO THE RESIDENTS. YOU WANT TO PUBLISH IT, YOU CAN PUBLISH IT.

* * *

[NEWMAN 182]

DEPUTY CLERK: PLAINTIFF'S EXHIBIT 19 IN EVIDENCE.

Q. (BY MR. WHERRY, CONTINUING) NOW, DOCTOR, IF YOU WOULD READ THE NEXT TO THE LAST PARAGRAPH ON THE LAST PAGE SLOWLY, IF YOU CAN READ FASTER THAN WE TALK.

A. "I WOULD LIKE TO AGAIN REITERATE THE GOALS NOT ONLY OF THE OBSTETRICAL DEPARTMENT OF THE MEDICAL UNIVERSITY OF SOUTH

CAROLINA, BUT ALSO THE GOALS OF THE POLICE DEPARTMENT AND SOLICITOR'S OFFICE. NAMELY THOSE GOALS ARE TO FIRST EDUCATE AS MANY PATIENTS AS POSSIBLE REGARDING THE HARMFUL EFFECTS OF ANY AND ALL DRUG ABUSE DURING PREGNANCY. SECONDLY, IF DESPITE EDUCATION DRUG ABUSE IS DOCUMENTED IN THE CURRENTLY PREGNANT WOMEN, AN EFFORT WILL BE MADE TO INSTITUTE A CHANGE IN THIS LIFE-STYLE THROUGH EDUCATION, COUNSELING, AND A MANDATORY ATTENDANCE AT A SUBSTANCE ABUSE CLINIC. THIRDLY, IF A PATIENT WHO IS KNOWN TO HAVE ABUSED DRUGS DURING PREGNANCY FAILS TO COMPLY WITH THIS TREATMENT PLAN OR IS NOTED TO BE ABUSING DRUGS IMMEDIATELY PRECEDING DELIVERY, THEN SHE WILL BE TAKEN INTO CUSTODY BY THE CHARLESTON CITY POLICE AND CHARGED WITH VARIOUS OFFENSES DESCRIBED BY THE SOLICITOR'S OFFICE. WHILE THIS MAY BE CONSIDERED PUNITIVE, I AGAIN - AGAIN I URGE YOU TO UNDERSTAND THAT THE PURPOSE BEHIND THIS IS PRIMARILY TO INSURE THAT DSS BECOMES INVOLVED IN FOLLOW-UP OF THAT INFANT AS WELL AS PROVIDING THE CRIMINAL JUSTICE SYSTEM AN OPPORTUNITY TO INVESTIGATE THE SITUATION AND PROBABLY IN MOST INSTANCES TO AGAIN MANDATE SUBSTANCE ABUSE TREATMENT AS A

[NEWMAN 183]

PREREQUISITE FOR RESUMING MATERNAL RELATIONSHIP WITH THAT CHILD."

Q. DOCTOR, AT THE TIME WHEN YOU WROTE THAT MEMO TO YOUR RESIDENTS, DID YOU FEEL THE POLICY WAS PUNITIVE?

A. NO, SIR, I DID NOT.

Q. EXPLAIN TO THE JURY, PLEASE, WHY YOU WROTE THAT IT MAY BE CONSIDERED TO BE PUNITIVE.

A. THAT IS A TERM THAT IS FREQUENTLY USED WHEN THIS POLICY IS DISCUSSED AND REFERRED. MANY PEOPLE CONSIDER THIS APPROACH PUNITIVE, AND THAT IS NOT WHAT I CONSIDERED IT.

Q. IN THAT LETTER, DOCTOR, YOU REPORT I THINK THREE CASE STUDIES, DON'T YOU?

A. THERE ARE SEVERAL PATIENTS WHO ARE DESCRIBED.

Q. YOU GOT THE INFORMATION ABOUT THOSE PATIENTS AND THEIR SUBSTANCE ABUSE AND THEIR ARREST FROM SHIRLEY BROWN, DIDN'T YOU?

A. YES, SIR.

Q. AND THAT INFORMATION ABOUT THOSE THREE PATIENTS THAT YOU GOT FROM SHIRLEY BROWN, THEIR SUBSTANCE ABUSE, THEIR ARRESTS WAS NOT INFORMATION THAT YOU NEEDED TO TREAT THOSE PATIENTS, WAS IT?

A. IT WAS FOLLOW-UP INFORMATION ON WHAT HAD BECOME OF THOSE

PATIENTS, BECAUSE AT THE MEETING THAT WE HAD WITH THE RESIDENTS WE HAD A RESIDENTS' MEETING EACH WEEK TO GO OVER VARIOUS ISSUES, BUT THEY WERE OBVIOUSLY AWARE OF THE POLICY,

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THEY WERE INVOLVED IN IT, AND THEY WANTED TO KNOW HOW THE POLICY WORKED, WHAT BECAME OF THE PATIENTS WHO WERE ARRESTED.

Q. MY QUESTION OF COURSE WAS: THAT WAS NOT INFORMATION THAT YOU NEEDED TO KNOW TO TREAT THOSE PATIENTS, WAS IT?

A. THOSE INDIVIDUAL PATIENTS?

Q. YES.

A. NO, SIR.

Q. NOW, DOCTOR, ANOTHER CONCERN THAT WAS EXPRESSED WAS THE WAY THE PATIENTS WOULD BE DISCHARGED, IF THEY WERE GOING TO THE JAIL?

A. I DON'T REMEMBER THAT SPECIFICALLY, NO.

Q. WELL, LET ME ASK YOU A DIFFERENT WAY. YOU WERE INVOLVED IN THE TREATMENT OF A NUMBER OF THESE OB/GYN PATIENTS WHO ARE SUBSTANCE-ABUSING WOMEN, FAIR?

A. YES, SIR.

Q. AND, DOCTOR, WHEN THEY WERE BEING DISCHARGED FROM THE HOSPITAL, BUT THAT DISCHARGE WAS GOING TO BE INTO THE CUSTODY OF THE CHARLESTON CITY POLICE DEPARTMENT, YOU WOULD BE AWARE

OF THAT, WOULDN'T YOU?
A. YES, SIR.
Q. AND, DOCTOR, I TAKE IT THE CONCEPT DISCHARGE IS A MEDICAL DECISION MADE BY A MEDICAL DOCTOR?
A. YES, SIR.
Q. YOU CAN'T GET OUT OF THE HOSPITAL WITHOUT THE DOCTOR SAYING OKAY, OR YOU SAYING I DON'T CARE WHAT THE DOCTOR SAYS,

[NEWMAN 185]

I'M LEAVING, FAIR?
A. A PATIENT CAN LEAVE UNDER THOSE CIRCUMSTANCES, BUT GENERALLY IT WOULD BE THAT THEY WOULD BE DISCHARGED FOLLOWING A MEDICAL DECISION THEY WERE ABLE TO GO HOME.
Q. DOCTOR, WHEN A WOMEN GIVES BIRTH TO A CHILD, THERE IS A PERIOD OF TIME AT WHICH SHE REQUIRES AFTER THAT BIRTH CERTAIN MEDICAL ATTENTION? I DON'T MEAN ATTENTION OF A DOCTOR, CERTAIN MEDICAL CARE; ISN'T THAT SO?
A. YES, SIR.
Q. AND PART OF THAT MEDICAL CARE WOULD INCLUDE THE USING AND THE HAVING AVAILABLE SANITARY NAPKINS?
A. YES, SIR.
Q. AND EPI FOAM, IS THAT WHAT IT'S CALLED?
A. THAT'S ONE MEDICATION THAT IS USED. NOT EVERY PATIENT NEEDS IT OR USES IT, BUT THAT'S ONE MEDICATION WE USE FOR

EPISIOTOMY DISCOMFORT.
Q. DOCTOR, WHEN A PATIENT LEAVES THE OB/GYN SERVICE AFTER DELIVERING A CHILD AT THE MEDICAL UNIVERSITY, THEY'RE GIVEN A KIT TO TAKE WITH THEM WITH THINGS THAT WILL HELP THEM POSTPARTUM, AREN'T THEY?
A. I BELIEVE THAT THEY ARE, YES, SIR.
Q. BUT, DOCTOR, IS IT SOMETHING THAT YOU CONSIDER IN AGREEING TO DISCHARGE A PATIENT THAT THE PATIENT WILL HAVE THOSE SUPPLIES, THE AVAILABILITY, THE THINGS THAT THE WOMEN NORMALLY TAKE WITH THEM FROM THE HOSPITAL WHEN YOU DISCHARGE

[NEWMAN 186]

THEM?
A. WHENEVER - YES, SIR. WHENEVER ANY PATIENT IS DISCHARGED THEY ARE - THERE IS - THEY MEET WITH THE PHYSICIAN, THE PHYSICIAN GIVES THEM DISCHARGE INSTRUCTIONS. USUALLY THIS INCLUDES PRECAUTIONS AS TO THINGS TO WATCH OUT FOR OVER THE SUBSEQUENT SEVERAL DAYS, DIFFERENT ACTIVITIES TO RECOMMEND AGAINST OR TO DO DEPENDING ON THE CLINICAL SITUATION. AND WAYS TO GET BACK IN TOUCH, PHONE NUMBERS OR ETCETERA TO GET BACK IN TOUCH WITH THE PROVIDERS IF THEY HAVE POSTPARTUM COMPLICATIONS. AND PATIENTS WERE GIVEN A PACKAGE AT THE TIME

OF DISCHARGE.
I'M AFRAID TO SAY I CAN'T TELL YOU EXACTLY WHAT WAS
IN IT. THERE WAS USUALLY WHAT IS CALLED A SITZ BATH. IT'S
PLASTIC - LITTLE PLASTIC TUB FOR CLEANING THE EPISIOTOMY.
AND WHETHER THERE WAS SANITARY NAPKINS IN THAT PACK OR NOT,
I'M NOT SURE. USUALLY DIAPERS. PLASTIC WATER JUG. AGAIN,
I'M SORRY I CAN'T TELL YOU EXACTLY WHAT WAS IN THAT PACKET,
BUT, YEAH, ALL OF THOSE THINGS WOULD GO. AND THE PATIENT
WOULD BE SEEN, COUNSEL, ADVISED BY THE PHYSICIAN PRIOR TO
THEIR DISCHARGE, AND THEN THEY WOULD BE DISCHARGED.
Q. DOCTOR, I REALIZE THAT EVERY PATIENT IS DIFFERENT, BUT ON
AVERAGE GIVE US SOME GUIDELINES AS TO HOW MANY TIMES IT WOULD
BE APPROPRIATE FOR A WOMEN, 24 HOURS POSTPARTUM, TO CHANGE
SANITARY NAPKINS?
A. GOSH. WELL THAT WOULD BE VERY HARD TO ANSWER IN REALLY

[NEWMAN 187]

ANY SPECIFICS BECAUSE IT DEPENDS UPON EACH INDIVIDUAL WOMAN'S
FASTIDIOUSNESS AND HOW MUCH POSTPARTUM LOCHIA OR BLEEDING THAT
THEY'RE HAVING. YOU KNOW, I WOULD GUESS IT'S PROBABLY CHANGED
EVERY SOMEWHERE TWO TO SIX HOURS, BUT I - IT WOULD REALLY

VARY FROM PERSON TO PERSON.
Q. DOCTOR, DO YOU THINK IT WOULD BE APPROPRIATE FOR A WOMEN,
ONE DAY OR LESS POSTPARTUM, TO BE DISCHARGED TO A JAIL CELL
WITH NO CLOTHING, ONLY A HOSPITAL GOWN, NO SANITARY NAPKINS,
NOR ACCESS TO ANY, AND NO OTHER MEDICAL SUPPLIES, WITH THE
ONLY PLACE TO COMFORT HERSELF BEING A JAIL COT, WOULD THAT BE
APPROPRIATE MEDICALLY?
A. NO, I WOULD NOT WANT TO THINK THAT THAT WAS HAPPENING.
Q. AND, DOCTOR, WAS IT TAKEN INTO CONSIDERATION BY YOU -
I'M NOT GOING TO ASK WHAT THE OTHER DOCTORS, JUST YOU, WHEN
YOU SIGNED DISCHARGES FOR WOMEN THAT YOU KNEW WERE GOING TO BE
DISCHARGED INTO CUSTODY, DID YOU CONSIDER WHETHER THEY WERE
GOING TO HAVE WITH THEM SANITARY NAPKINS, MEDICAL SUPPLIES,
CLOTHING OTHER THAN A HOSPITAL GOWN, BLANKETS FOR THEIR BED?
A. WELL, I THINK YOU WOULD HAVE TO ANSWER THAT QUESTION IN A
COUPLE OF WAYS: FIRST OF ALL, YES. THE OVERALL ANSWER IS,
YES, WE DID CONSIDER THOSE THINGS.
Q. NOT WE, YOU?
A. YES, I CONSIDERED THOSE THINGS. AND DISCUSSIONS WERE
HELD AT VARIOUS TIMES WITH PEOPLE FROM THE POLICE DEPARTMENT
AND WITH PEOPLE FROM THE SOLICITOR'S OFFICE AS TO WHAT WAS

[NEWMAN 188]

HAPPENING TO THESE PATIENTS WHEN THEY WOULD LEAVE THE HOSPITAL.

I WOULD SAY FIRST OF ALL THAT WHEN THEY LEFT THE HOSPITAL, AT THE TIME THEY WERE IN THE HOSPITAL, THEY RECEIVED NO DIFFERENT POSTPARTUM CARE THAN ANY OTHER WOMEN WOULD HAVE RECEIVED OTHER THAN AS IN REGARD TO THE COUNSELING REGARDING THE DRUG ABUSE POSITIVE TESTING. BUT AS FAR AS THEIR POSTPARTUM CARE, WHAT THEY WERE, PROVIDED WITH WHEN THEY LEFT THE HOSPITAL, PROVISIONS, SUPPLIES OR WHAT HAVE YOU, THEY WOULD HAVE BEEN TREATED EXACTLY THE SAME AS ANYONE ELSE.

IN TERMS OF SOME OF THE THINGS THAT ARE BEING ALLEGED IN TERMS OF NOT HAVING ANY CLOTHES, I CANNOT SPEAK TO THE PARTICULAR SITUATION THAT A PATIENT MAY BE - I MEAN, I WOULD WANT TO MAKE SURE A PATIENT HAD CLOTHING IF - I WOULD FEEL CONFIDENT THAT HER CLOTHING WERE NOT KEPT FROM HER. BUT IF A PATIENT DID NOT HAVE CLOTHING TO GO. TO THE HOSPITAL - I MEAN, TO GO OUT OF THE HOSPITAL IN, I WOULD HOPE THAT WOULD BE AN ISSUE FOR SOCIAL SERVICES TO ADDRESS AND GET THAT PATIENT CLOTHING TO GO IN.

WE WERE ASSURED BY THE POLICE THAT THE PATIENTS WERE BEING CARED FOR IN AN APPROPRIATE FASHION AT THE JAIL. IN TERMS OF HAVING A BLANKET AND PROPER MEDICAL NECESSITIES, THE JAILS ARE SUPPOSED TO BE ABLE TO PROVIDE THOSE AND WE WERE ASSURED THAT THEY WERE. WE ALSO HAD THE AVAILABILITY OF THESE PATIENTS, IF THEY HAD PROBLEMS, TO COME BACK TO OUR POSTPARTUM

[NEWMAN 189]

CLINICS, WHICH THEY DID QUITE FREQUENTLY ESCORTED BY A POLICEWOMAN.

Q. DOCTOR, WOULD YOU AGREE WITH ME IT WOULD BE INAPPROPRIATE FOR POSTPARTUM WOMEN, ONE DAY OR LESS POSTPARTUM, BEING DISCHARGED TO CUSTODY WHEN ASKED - WHEN HAVING ASKED TO BE ABLE TO PUT ON THE CLOTHES SHE HAD WITH HER BEFORE GOING INTO CUSTODY, TO HAVE THAT REFUSED BY MEDICAL PERSONNEL?

A. I WOULD FIND THAT - I WOULD FIND THAT INAPPROPRIATE, YES.

Q. DOCTOR, JUST ONE LAST QUESTION IN THIS AREA, I THINK. DID YOU EVER YOURSELF AS ONE OF THE PEOPLE - INVOLVED IN THIS POLICY, GET IN YOUR CAR AND DRIVE TO THE JAIL TO LOOK AT THE FACILITIES YOU WERE DISCHARGING WOMEN TO?

A. NO, SIR, I DID NOT.
Q. DOCTOR, YOU HAVE IN THE PAST STATED, HAVEN'T YOU, THAT IT WAS THE - IT BEING THE POLICY, THE PURPOSE OF THE POLICY WAS TO PRIMARILY - WAS PRIMARILY TO INSURE THAT DSS BECAME INVOLVED?
A. I WAS ASKED THAT QUESTION AND MADE THAT STATEMENT IN MY DEPOSITION BASED ON ONE OF THESE TWO LETTERS THAT WERE SHOWN. I THINK IT'S PROBABLY THIS LETTER THAT I SENT TO THE RESIDENTS, BUT I WOULD HAVE TO LOOK THROUGH IT. AND AT THE TIME OF MY DEPOSITION I SAID WHILE I SAID THAT, I WAS - PROBABLY WAS EMPHASIZING THAT POINT, I BELIEVE IT IS A VERY IMPORTANT ASPECT OF THE POLICY. BUT THE POLICY HAS OTHER

[NEWMAN 190]

IMPORTANT ELEMENTS AS WELL. IN ADDITION IT - IT IS IMPORTANT FROM THE PERSPECTIVE OF PROTECTING A PREGNANT WOMAN WHO IS TAKING THESE DRUGS AND COMPLICATIONS THAT OCCUR. AND IT'S IMPORTANT TO PREVENT STILLBIRTH AND NEONATAL DEATHS WHICH OCCURRED AND FOR THOSE INFANTS THAT DO SURVIVE THIS SITUATION AND DELIVERY. IT WAS IMPORTANT TO HAVE DSS INVOLVED FOR THE CONTINUING PROTECTION OF THAT CLIENT AND THE NEWBORN

ENVIRONMENT AND HOME ENVIRONMENT. SO MY ANSWER IN THE DEPOSITION I BELIEVE WAS THAT WHILE I SAID THAT AND BELIEVE IT TO BE TRUE, IT'S NOT THE MOST IMPORTANT ASPECT OF THE POLICY.

Q. DOCTOR, SPEAKING OF THIS PREMATURE BIRTH AND STILLBORN THOSE COMMENTS THAT YOU JUST MADE, YOU'RE AWARE, AREN'T YOU, OF THE MITTENDORF-EVAN SYSTEM DEVELOPED AT THE UNIVERSITY OF CHICAGO FOR THE COMPUTATION AND PREDICTION OF PREMATURE BIRTH?

A. THERE ARE MANY DIFFERENT PRE-TERM BIRTH PREDICTION MODELS, AND MITTENDORF IS ONE OF THEM. IT'S NOT ONE THAT WE SPECIFICALLY USE, NO.

Q. WELL MY QUESTION IS NOT WHETHER YOU USE IT NOT HOW MANY THERE ARE, WHETHER YOU'RE AWARE OF THE MITTENDORF-EVAN SYSTEM FOR PREDICTABILITY FOR PREMATURE BIRTH?

A. I HAVE HEARD OF IT, BUT I COULD NOT TELL YOU DETAILS OF IT.

Q. AND IN THE CONTEXT OF THAT ANSWER, LET ME JUST CONFIRM YOUR TERTIARY LEVEL HIGH-RISK PREGNANCY CENTER?

A. YES, SIR.

* * *

[NEWMAN 193]

PROBLEM THAT PEOPLE DO HAVE IN KEEPING THESE APPOINTMENTS.

THE ENFORCEMENT OF THE POLICY WOULD BE NOT COMPLETELY BASED ON, YOU KNOW, A PERFECT ATTENDANCE MARK AT THESE CLINICS. IF A PATIENT MISSED A CLINIC APPOINTMENT BUT HAD A REASONABLE, RATIONAL EXCUSE, BUT DEMONSTRATED A CONTINUING INTEREST IN SUBSTANCE ABUSE TREATMENT, AND MORE IMPORTANTLY REMAINED FREE OF POSITIVE DRUG TESTING, THAT IS WHAT THEY ENDED UP BEING ARRESTED FOR. I THINK THERE WAS DISCRETION IN THE POLICY THAT ALLOWED THE CONSIDERATION OF ISSUES SUCH AS TRANSPORTATION AND OTHER REASONS WHY AN INDIVIDUAL PATIENT MAY MISS AN INDIVIDUAL APPOINTMENT AT A GIVEN TIME.

Q. AND THAT DISCRETION WAS LEFT TO SHIRLEY BROWN WASN'T IT?

A. NO. I WOULD SAY PROBABLY MOST OF THAT DISCRETION WAS LEFT TO THE COUNSELORS AT THE SUBSTANCE ABUSE FACILITY.

Q. AND WHEN THEY DETERMINED SOMEONE HAD NOT PARTICIPATED THE WAY THEY THOUGHT SHE SHOULD, THEY CALLED SHIRLEY BROWN WHO THEN DETERMINED WHETHER OR NOT TO CALL THE POLICE AND THE SOLICITOR'S OFFICE, FAIR?

A. I'M NOT SURE WHETHER THEY CALLED SHIRLEY BROWN OR THE SOLICITOR'S OFFICE DIRECTLY. BUT THEY WOULD HAVE INITIATED THOSE REPORTS, THAT'S TRUE.

Q. SIR, THERE WERE A NUMBER OF REFERRING AGENCIES TO YOU -

THAT WAS A BAD QUESTION.
THERE WERE A NUMBER OF REFERRING CLINICS AND
AGENCIES TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, FAIR?

[NEWMAN 194]

A. YES, SIR.
Q. THE FETTER CLINIC?
A. YES, SIR.
Q. YOUR OWN FAMILY PRACTICE CLINIC?
A. YES, SIR.
Q. AND I THINK IN YOUR DEPOSITION YOU MENTION SIX OR SEVEN OR EIGHT OF THEM?
A. PUBLIC HEALTH CLINICS IN THE TRI-COUNTY REGION.
Q. RIGHT. THE INTERAGENCY POLICY WASN'T ENFORCED AT THOSE CLINICS, WAS IT?
A. THOSE CLINICS WERE NOTIFIED OF OUR POLICY. YOU KNOW, WE ADVISED THEM TO ADOPT IT. WE ADVISED THEM TO ADOPT THE EDUCATIONAL COMPONENTS. BUT WE DID NOT HAVE ANY ADMINISTRATIVE CONTROL OVER THOSE CLINICS AND WE COULD NOT MANDATE THAT THIS BE INSTITUTED THERE.
Q. BUT ONE OF THE REASONS I THINK THAT YOU SAID THAT IT WAS ADOPTED AT MUSC WAS BECAUSE YOU PERCEIVED IT TO BE YOUR LEGAL DUTY. THAT WAS EXPLAINED TO YOU TO - TO THE PEOPLE AT THE HOSPITAL, IT WAS YOUR LEGAL DUTY TO ENFORCE THIS POLICY, FAIR?

A. YES, SIR.
Q. AND IN FACT THAT MEANS THAT YOU ATTENDED - JOE GOOD YOUR GENERAL COUNSEL TOLD YOU THAT, RIGHT?
A. YES, SIR.
Q. CHARLIE CONDON THE SOLICITOR TOLD YOU THAT?
A. YES, SIR.

[NEWMAN 195]

Q. THE INTERAGENCY POLICY WAS NOT ENFORCED AT ANY OF THESE CLINICS YOU MENTIONED, WAS IT, THAT REFERRED TO YOU DURING THE INTERAGENCY POLICY PERIOD?
A. NO, SIR, IT WAS NOT. TO MY KNOWLEDGE. WHETHER ANY OF THOSE PUBLIC HEALTH CLINICS ADOPTED COMPONENTS OF IT OR THE EDUCATIONAL COMPONENT OF IT, I FRANKLY CAN'T TELL.
Q. THE ARREST COMPONENT WASN'T ADOPTED BY THEM, WAS IT?
A. NO.
Q. NOW, DOCTOR -
A: NOT IN THE ANTEPARTUM SETTING.
Q. THAT IS, NOBODY GOT ARRESTED PRE-DELIVERY FOR USING DRUGS AND BEING PREGNANT; IS THAT RIGHT?
A. YES, SIR.
Q. POST-DELIVERY THE INFORMATION WOULD HAVE COME FROM MUSC RIGHT?
A. YES, SIR. COULD I CLARIFY THAT?
THE COURT: CERTAINLY.
A. WHEN THE POLICY WAS INITIALLY IMPLEMENTED, A PATIENT WHO

HAD NO PRENATAL CARE OR HAD RECEIVED PRENATAL CARE SOMEWHERE ELSE THAN THE MEDICAL UNIVERSITY PREGNANCY CLINICS, IF THEY WOULD HAVE COME IN, DELIVERED A BABY, HAD A COMPLICATION THAT WAS SUGGESTIVE OR ASSOCIATED WITH THE DRUG ABUSE, THEY WOULD HAVE BEEN TESTED. AND IF THEY TESTED POSITIVE, THEY - AND DELIVERED, THEY WOULD HAVE BEEN ARRESTED.

AFTER A PERIOD OF TIME THAT WAS CHANGED BECAUSE IN

[NEWMAN 196]

[ALL] OF THE CONCERNS THAT THE COUNSELOR IS BRINGING UP, THAT [SOME] PATIENTS HAD NOT HAD THE BENEFIT OF BEING INSTRUCTED IN [THE] POLICY AND PROVIDED WITH THE EDUCATIONAL MATERIALS AND [] AND WHATNOT IN THE ANTEPARTUM SETTING. SO AFTER THE [FIRST] THREE OR FOUR MONTHS OF THE POLICY IT WAS CHANGED IF THE [WOMAN] CAME FROM OUTSIDE THE UNIVERSITY SYSTEM WHO HAD NOT [BEEN] PROVIDED WITH THESE EDUCATIONAL MATERIALS AND TESTED [BEFORE] EVEN THOUGH SHE MAY HAVE DELIVERED, THAT PATIENT WAS [STILL] TREATED AS SOMEONE FROM OUR OWN CLINIC WHO MAY HAVE [TESTED] POSITIVE. SHE WAS COUNSELED, GIVEN EDUCATION, NOTIFIED [] - THAT THE SOLICITOR'S OFFICE WAS AWARE OF THEIR -

SUBSTANCE ABUSE, AND THAT SHE SHOULD GO TO SUBSTANCE ABUSE
[TREATMENT]
[Q. FINISHED], DOCTOR?
[A. YES.]
Q. DOCTOR, THE POLICY BEGAN WHEN?
A. I BELIEVE IN LATE 1989.
Q. OCTOBER 1ST?
[A. SPECIFIC] DATE, THAT SOUNDS REASONABLE.
[Q. IT WAS] APPROVED BY THE EXECUTIVE COMMITTEE OR WHATEVER OF [THE HOSPITAL?]
[A. YES,] SIR.
[Q. WHEN] DID IT END?
[A. I CAN'T] TELL YOU SPECIFIC DATE.
MR. HOOD: IF THE COURT PLEASE, YOU RULED ON THAT

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[NEWMAN 201]

PATIENT BEING DISCHARGED THE METHOD AND THE CIRCUMSTANCES
UNDER WHICH THEY LEAVE THE HOSPITAL TO GO TO WHEREVER IT IS
THEY'RE GOING?
A. WELL, AGAIN I'M NOT SURE EXACTLY WHAT YOU MEAN BY
METHOD. OBVIOUSLY LEAVING THE HOSPITAL IN A - WITH HANDCUFFS
IS EXTREMELY SAD, BUT I DON'T THINK IT HAS ANY RELEVANCE TO
THE MEDICAL DECISION THAT SHE IS ABLE TO BE DISCHARGED FROM
THE HOSPITAL.
Q. DOCTOR, YOU HAVE HAD THE OCCASION, HAVEN'T YOU, IN YOUR

MEDICAL CAREER, TO CAUSE PATIENTS WHO YOU THOUGHT WERE IN NEED OF IT FOR THE PROTECTION OF THEMSELVES OR OTHERS TO BE COMMITTED PSYCHIATRICALLY?

A. YES, SIR.

Q. AND YOU HAVE HAD OCCASION TO DO THAT, HAVEN'T YOU, DOCTOR, IN CONNECTION WITH PREGNANT WOMEN ABUSING AT LEAST ALCOHOL?

A. YES, SIR.

Q. AND UNDER THOSE CIRCUMSTANCES, DOCTOR, YOU AVAILED YOURSELF OF THE CIVIL COMMITMENT PROCEEDINGS?

A. YES, SIR.

Q. AND THE PATIENT WENT INTO MANDATORY REQUIRED TREATMENT, FAIR?

A. YES, SIR. WHEN YOU SAY I TOOK - I AVAILED MYSELF OF IT I SUSPECT THAT I PROBABLY DIDN'T PERSONALLY GO THROUGH THE PROCEDURE BUT PROBABLY ENLISTED THE ASSISTANCE OF THE

[NEWMAN 202]

DEPARTMENT OF PSYCHIATRY. ,

Q. SURE. AND PROBABLY SIGNED, AS ONE OF THE DOCTORS WHO SAID THIS WAS NECESSARY, RIGHT?

A. YES, SIR.

Q. DID YOU EVER DO THAT DURING THE PERIOD OF THE INTERAGENCY POLICY WITH ANY OF THE WOMEN WHO WERE ABUSING OTHER SUBSTANCES?

A. WHAT DO YOU MEAN BY OTHER SUBSTANCES?
Q. COCAINE?
A. NOT THAT I REMEMBER, NO, SIR.
Q. YOUR USING OR AVAILING YOURSELF OF THE INVOLUNTARY COMMITMENT PROCEDURE BOTH PREDATED AND POSTDATED THE POLICY, DIDN'T IT?
A. YES, SIR.
Q. WAS THERE ANY REASON, IN YOUR MIND, WHY THAT INVOLUNTARY COMMITMENT PROCEDURE THAT YOU HAVE USED BEFORE THE POLICY, AND I TAKE IT DURING THE POLICY, ALTHOUGH I DIDN'T ASK YOU THAT FOR ALCOHOL, AND AFTER THE POLICY, ANY REASON THAT IT COULDN'T HAVE BEEN USED DURING THE POLICY FOR COCAINE.
A. WELL, COULD - WE COULDN'T DO THAT BECAUSE THAT'S NOT WHAT THE POLICY INSTRUCTED US TO DO.
Q. ABSENT THE POLICY NOT INSTRUCTING YOU TO DO IT, WAS THERE ANY REASON THAT YOU COULDN'T DO IT? WAS COCAINE THE SAME KIND OF THING AS ALCOHOL IN SO FAR IS IT IMPACTED ON THE FETAL HEALTH?

[NEWMAN 203]

A. WE COULD HAVE INQUIRED AS TO THAT, YES.
Q. ONE OF THE THINGS THAT YOU DO AS AN ACADEMIC, AND YOU DID IT WITH THE TWIN STUDY, WHEN YOU WANT TO KNOW WHETHER A NEW

PROJECT, A NEW PROGRAM WAS VIABLE OR WAS WORKING ONCE YOU STARTED IT, YOU GIVE A - YOU SET UP A DESIGN STUDY, DIDN'T YOU?

A. WITH REGARDS TO THE TWIN CLINIC PAPER?

Q. YEAH, YOU DESIGNED A STUDY, DIDN'T YOU?

A. YES, SIR.

Q. WAS A STUDY DESIGNED WITH RESPECT TO THE INTERAGENCY POLICY THAT YOU KNOW OF BY ANY OF THE ACADEMICS?

A. DR. HORGER DID A REPORT OF AN OBSERVATIONAL INVESTIGATION OF IT AFTER IT HAD BEEN IN EFFECT APPROXIMATELY A YEAR.

Q. THAT'S A RETROSPECTIVE REPORT?

A. YES, SIR.

Q. RATHER THAN DESIGNING A STUDY PROSPECTIVELY, FAIR?

A. YES, SIR MY REPORT, I WOULD JUST CLARIFY I WOULD SAY THAT WHAT WE REPORTED FROM THE TWIN CLINIC WAS ALSO A RETROSPECTIVE REPORT OF THE OUTCOME OF OUR TWIN CLINIC PATIENTS COMPARED TO TWINS CARED FOR AT THE UNIVERSITY PRIOR TO OUR STARTING THE TWIN CLINIC. SO IN A SENSE THAT WAS REALLY A RETROSPECTIVE REVIEW OF THAT POPULATION EXPERIENCE AS WELL.

Q. I THINK, DOCTOR, JUST TWO MORE QUESTIONS FOR ME. THE FIRST ONE IS, YOU TALKED ABOUT PART OF THE POLICY WAS

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[NEWMAN 205]

A. WELL - NO, IT'S POSSIBLE. IT MAY DEPEND UPON THE NATURE OF THE CONVERSATION HOW MUCH TIME WE SPENT WITH IT. IF IT WAS JUST A DISCUSSION WITH THE PATIENT ACKNOWLEDGING THAT THIS TEST HAS TURNED OUT POSITIVE WE HAVE GOT A PROBLEM NOW BECAUSE THIS IS A VIOLATION OF THE LAW AND WE'RE GOING TO HAVE ONE OF OUR NURSE MANAGERS COME TALK TO YOU ABOUT IT MORE IN DETAIL, I MAY NOT MAKE A FORMAL NOTATION ABOUT THAT IN THE CHART. I MAY ALLOW THE NURSE MANAGER TO MAKE A FORMAL NOTATION AND I MAY CO-SIGN IT OR I MAY MAKE A COMMENT IN MY OWN PROGRESS NOTE, BUT I WOULDN'T SAY THAT I DID IT EVERY TIME.

Q. WHAT I'M TRYING TO ASCERTAIN, DOCTOR, IF WE LOOK AT ALL OF THE PATIENTS' RECORDS THAT WERE INVOLVED IN THE POLICY, WE WOULD FIND NOTES IN THERE FROM YOU - ON AT LEAST SOME OF THEM, THAT YOU HAD THIS COUNSELING CONVERSATION ABOUT THE LAW?

A. WELL I WOULD SAY THAT FIRST OF ALL I WAS NOT INVOLVED WITH ALL OF THE PATIENTS INVOLVED IN THE COUNSELING.

Q. I KNOW THAT.

A. AND FROM THE DEPOSITION, AT LEAST ONE OF THE CHARTS THAT

THEY SHOWED ME, I REMEMBERED SPEAKING TO THE PATIENT IN REGARDS TO THAT AND ADDING A NOTATION TO THE SOCIAL WORKER OR CASE MANAGER'S NOTE.

Q. SO THE ANSWER TO MY QUESTION IS YES?

A. YES.

Q. THANK YOU. DOCTOR, YOU INDICATED ANY PATIENTS WHO TESTED POSITIVE THE SECOND TIME WOULD BE ARRESTED AND CHARGED?

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[NEWMAN 211]

Q. AND HAVE YOU LECTURED EXTENSIVELY ACROSS THE UNITED STATES IN YOUR FIELD OF FETAL MATERNAL MEDICINE?

A. YES, SIR.

THE COURT: AGAIN, MR. HOOD, LET HIM TESTIFY AND STOP LEADING.

Q. (BY MR. HOOD, CONTINUING) HAVE YOU GIVEN POSTERS TO GRADUATE PATIENTS, DOCTOR?

THE COURT: AGAIN.

A. AS PART OF MY PROFESSIONAL RESPONSIBILITIES DOES INCLUDE RESEARCH AND EDUCATIONAL ACTIVITIES. THE RESEARCH THAT WE DO FREQUENTLY IS PRESENTED AT NATIONAL MEETINGS IN THE FORM OF ORAL PRESENTATION OR WHAT ARE REFERRED TO AS POSTERS. THAT RESEARCH USUALLY THEN GOES ON TO BE DEVELOPED INTO A

MANUSCRIPT THAT IS SUBMITTED FOR PUBLICATION.
Q. AND ARE YOU INVOLVED AS WELL IN RESEARCH?
A. YES.
Q. NOW, THIS LAWSUIT IS ABOUT WHAT WE CALL THE INTERAGENCY POLICY. I WANT YOU TO TELL THE JURY FIRST BEFORE THE POLICY IN LATE '89, IF A WOMEN CAME IN AND HAD MEDICAL COMPLICATIONS, WHAT WAS DONE? I WANT TO TALK ABOUT WHAT WAS BEING DONE IN - AT THE MEDICAL UNIVERSITY BEFORE THE POLICY.
A. IN REGARD TO DRUG TESTING OR GENERAL TREATMENT?
Q. WELL, NO. LET'S TALK ABOUT DRUG TESTING.
A. WELL, IF A PATIENT CAME INTO THE HOSPITAL THAT HAD AN OBSTETRICAL COMPLICATION THAT WE FELT WAS RELATED TO THE

[NEWMAN 212]

POTENTIAL OF DRUG ABUSE, WE WOULD PERFORM DRUG TESTING, URINE DRUG TESTING ON THAT PATIENT TO DETERMINE IF DRUGS WERE INVOLVED. WE DID IT NOT UNDER A PROTOCOL, AT THAT POINT BUT MORE JUST AS PART OF CLINICAL DECISION MAKING.
AT SOME POINT, I THINK PROBABLY IN '89, WE DID PUT TOGETHER A LIST JUST TO TRY TO MAKE IT MORE UNIFORM OF WHAT WE

FELT WERE THE INDICATORS FOR WHICH WE SHOULD OBTAIN URINE DRUG TESTS. AND AGAIN THIS WAS PRIOR TO INSTITUTING THE POLICY. WE WERE RECOGNIZING WHAT WE FELT WERE MORE AND MORE PATIENTS EXPERIENCING, USING COCAINE DURING PREGNANCY AND WE FELT AND IT WAS IN OUR OPINION RELATED TO A NUMBER OF DIFFERENT OBSTETRICAL COMPLICATIONS. WHAT WE PROBABLY SAW THE MOST OF WERE ABRUPTIO PLACENTA, STILLBIRTHS AND PREMATURE LABOR THAT DIDN'T RESPOND TO THE TYPICAL TREATMENTS THAT WE USED. AND, AGAIN, THESE ARE VERY SERIOUS.

AND ALSO THE PEDIATRICIANS WERE ALSO TELLING US THAT IN THEIR EXPERIENCE THEY WERE DEALING WITH MORE AND MORE BABIES THAT WERE HAVING WITHDRAWAL TYPE SYNDROME AND OTHER PROBLEMS THEY FELT WAS ATTRIBUTED TO COCAINE OR OTHER DRUGS AS WELL. BUT, WE WERE EXPERIENCING, WE THOUGHT, A SIGNIFICANT INCREASE IN THIS. AT THE SAME TIME THE MEDICAL LITERATURE THERE WAS MORE AND MORE BEING WRITTEN ABOUT AS TO CONSEQUENCE OF DRUG ABUSE AND PREGNANCY.

AND IN MANY OCCASIONS IT BECAME VERY CLINICALLY NECESSARY TO HAVE THIS INFORMATION. HOW TO DEAL WITH

PREMATURE LABOR IN THIS SITUATION WAS DIFFERENT. THEY DIDN'T RESPOND TO THE TYPICAL MEDICATION WE USED. THEY AT SOME POINT, IF WE USED THE TYPICAL MEDICATION WE USED, IN A PATIENT WHO WAS ON COCAINE, THAT INCREASED THE MATERNAL RISK OF THE DRUG. THERE WERE REPORTS OF WOMEN BEING TREATED WITH DRUGS SUCH AS RITODRINE AND TERBUTALINE, WHICH ARE TYPICALLY USED FOR PRE-TERM LABOR, WHICH IS CARDIAC STIMULANT, AND THAT BEING USED ON TOP OF A PATIENT WHO HAD USED COCAINE, WHICH IS ALSO A CARDIAC STIMULANT, RESULTING IN HEART ATTACKS AND STROKES AND THINGS LIKE THAT. SO WE WERE CONFRONTING THESE CASES OF PREMATURE LABOR AND WE WERE COLLECTING THAT INFORMATION.

STILL BIRTHS WE COLLECTED. EXCUSE ME, WHEN THERE WERE STILLBIRTHS OF ABRUPTIO PLACENTA, WE WOULD GET THIS INFORMATION AND TRY TO IDENTIFY THE CAUSE. IF A WOMEN LOST A BABY, SHE WAS GOING TO BE INTERESTED IN KNOWING WHY, WE WERE INTERESTED IN KNOWING WHY, AND WE WOULD WANT TO DO WHAT WE COULD TO PREVENT IT. IN FUTURE PREGNANCIES THERE IS A RISK OF RECURRENCE OF STILLBIRTH, AND TO BE ABLE TO DEAL WITH THAT RISK YOU HAVE TO KNOW WHAT CAUSED IT. AND COCAINE WAS PROVING

TO BE ONE OF THE THINGS ASSOCIATED WITH IT.

WE ALSO EXPERIENCED, AGAIN, WOMEN WITH ABRUPTIO PLACENTA. I VERY VIVIDLY REMEMBER A PATIENT WHO WE HAD BEEN FOLLOWING IN OUR HIGH-RISK CLINIC HAD HAD A VISIT WITHIN THE LAST SEVERAL DAYS FOR WHATEVER REASON HAD WANTED TO BE ADMITTED AND PUT INTO LABOR, I CAN'T REMEMBER THE REASON WHY.

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WE DIDN'T FEEL LIKE IT WAS NECESSARY AT THAT POINT. AND SHE CAME BACK WITH AN ABRUPTIO PLACENTA AND I BELIEVE HER BABY DIED. AND SHE WAS VERY ANGRY TELLING US THAT WE SHOULD HAVE PUT HER IN THE HOSPITAL LAST WEEK WHEN SHE FELT LIKE SHE SHOULD HAVE BEEN DELIVERED AND THAT IT WAS ALL OUR FAULT. AND FORTUNATELY IN THAT CASE FOR US, NOT FOR HER OR THE BABY, SHE PROVED TO BE COCAINE POSITIVE. AND SHE - WE DIDN'T HEAR MUCH FROM HER AFTER THAT. BUT I HAD NO DOUBT WE WERE GOING TO BE SUED BY HER FOR MALPRACTICE UNTIL WE HAD THAT INFORMATION.

SO HAVING THAT INFORMATION HAD CLINICAL IMPORTANCE, IT HAD IMPORTANCE FROM KNOWING THE CASE OF WHY THINGS HAPPEN, BOTH FOR THE PATIENTS' BENEFIT AND OUR BENEFIT TO KNOW WHY

THINGS HAPPENED. SO WE TESTING THE PATIENT AT THAT POINT IN TIME.
Q. AND THAT'S UDS, URINE DRUG SCREENS?
A. YES, SIR.
Q. OKAY.
A. I WOULD ALSO ADD THAT PEDIATRICIANS WERE TESTING AS WELL BECAUSE THEIR MANAGEMENT OF NEWBORNS WERE AFFECTED BY WHETHER OR NOT THEY WERE GOING TO HAVE A COCAINE WITHDRAWAL OR OTHER MANIFESTATIONS OF COCAINE EXPOSE.
Q. NOW THE POLICY THAT WE'RE DISCUSSING IN THIS LAWSUIT, WOULD YOU EXPLAIN TO THE JURY THE EVOLUTION OF THE POLICY FROM YOUR PERSPECTIVE AS A PHYSICIAN TREATING PATIENTS AND BEING AMONG THE DEPARTMENT OF OBSTETRICS AT THE MEDICAL UNIVERSITY?

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A. MY PERSPECTIVE ON THE EVOLUTION OF THE POLICY INVOLVES BEING ASKED TO ATTEND A MEETING IN 1989. AT THAT TIME THAT MEETING WAS ATTENDED BY A VARIETY OF INDIVIDUALS FROM THE DEPARTMENT OF OBSTETRICS AND GYNECOLOGY, PEOPLE FROM THE DEPARTMENT OF PEDIATRICS, AND MANY OF THE OTHER DEFENDANTS IN THIS SUIT TO DISCUSS WHAT WAS NECESSARY IN OUR ROLES AS PHYSICIANS AND PUBLIC SERVANTS IN REGARD TO THE LAW REGARDING

REPORTING POSITIVE COCAINE DRUG TESTS. MY UNDERSTANDING WAS THAT IT HAD BEEN LEARNED BY THE HOSPITAL LAWYER, MR. GOOD, WE WERE DOING THIS TEST AND HE WAS CONCERNED ABOUT WHAT WAS HAPPENING.

MR. WHERRY: COMPETENCE. HEARSAY. HE IS NOW TALKING ABOUT MR. GOOD'S CONCERN. HE IS NOT A PARTY, HE CAN ONLY LEARN THAT FROM WHAT MR. GOOD TOLD HIM OR SOMEONE ELSE TOLD HIM.

THE COURT: WELL, IT'S MY UNDERSTANDING THAT THIS WITNESS IS NOT ONLY A DEFENDANT, BUT HE IS ALSO SOMEONE WHO WAS INVOLVED IN THE PROMULGATION OF THIS POLICY; IS THAT NOT CORRECT.

MR. WHERRY: YES, SIR.

THE COURT: ALL RIGHT. IT'S ALSO MY UNDERSTANDING THAT - WHY THE POLICY WAS PROMULGATED IN THE FIRST INSTANCE IS RELEVANT, IS IT NOT?

MR. WHERRY: SIR, I THINK SO.

THE COURT: JUST ANSWER MY QUESTION. IS IT NOT THE

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[NEWMAN 218]

OKAY.

HOW LONG ARE YOU GOING TO BE, MR. HOOD?

MR. HOOD: I'M NOT SURE. TWENTY MINUTES.

THE COURT: WE NEED TO TAKE A BREAK, SO LET'S TAKE IT NOW WHILE WE HAVE STOPPED THE TESTIMONY

(WHEREUPON, A BREAK WAS TAKEN OFF THE RECORD.)

Q. (BY MR. HOOD, CONTINUING) DR. NEWMAN, YOU WERE EXPLAINING TO THE JURY THE EVOLUTION OF THE POLICY AND THE MEETINGS THAT YOU WENT TO. PLEASE CONTINUE.

A. WELL, AS I SAID, THERE WAS A - ONE MEETING THAT I WAS NOT IN ATTENDANCE AT. THE SECOND. MEETING, THE DEPARTMENT - MEMBERS OF THE DEPARTMENT OF OBSTETRICS AND GYNECOLOGY ATTENDED. AND THE PURPOSE OF THE MEETING WAS TO ADDRESS THE ISSUE OF INCREASING FREQUENCY OF COCAINE POSITIVE MOTHERS AND OBSTETRICAL AND NEWBORN COMPLICATIONS IT WAS CAUSING AND HOW COULD WE APPROACH - WHAT COULD WE DO IN TERMS OF INTERVENTION TO TRY TO STOP THIS PROBLEM OR AT LEAST REDUCE IT.

Q. NOW BEFORE THERE WAS A FORMAL POLICY, WAS THERE A PROTOCOL CONCERNING URINE DRUG SCREENS FOR PATIENTS?

A. THERE WERE SOME STAGES. I THINK IN 1988 AND MAYBE THROUGH EARLY PARTS OF 1989, PATIENTS THAT WERE BEING SCREENED FOR - HAVING THEIR URINE SCREENED FOR DRUGS WAS DETERMINED BY

THE INDIVIDUAL PHYSICIAN TAKING CARE OF THAT PATIENT BASED ON THEIR CLINICAL JUDGMENT. AND I DON'T THINK THERE WAS ANY POLICY AS TO WHO SHOULD BE TESTED AND WHO SHOULDN'T.

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IN, I THINK JUNE OF 1989, DR. ED HORGER, WHO IS HEAD OF THE DIVISION OF THE MATERNAL FIELD OF MEDICINE, AT THE TIME SENT OUT A MEMO LISTING CRITERIA THAT WE FELT WERE APPROPRIATE INDICATIONS TO PERFORM URINE DRUG SCREENING. AND THEN THAT LIST BECAME THE BASIS OF A SLIGHTLY EXPANDED LIST OF INDICATORS FOR TESTING THAT WAS INCLUDED AS PART OF THE POLICY ULTIMATELY.

Q. OKAY. AND BEFORE THE POLICY, WAS A RECOMMENDATION, IN YOUR EXPERIENCE, TO PATIENTS TO OBTAIN SUBSTANCE ABUSE VOLUNTARILY WORKING?

A. NO, SIR.

Q. BEFORE THE POLICY WERE THEY SUBJECTIVE, THAT IS, UP TO THE INDIVIDUAL DOCTORS' CHOICE WITH REGARD TO URINE DRUG SCREEN?

A. YES, SIR. ONE OF THE SPECIFIC REASONS THAT WE CHOSE TO INSTITUTE A PROTOCOL AS TO WHO WERE APPROPRIATE CANDIDATES FOR SCREENING IS BECAUSE WE FELT THAT WOULD BE BETTER, MORE

EVENHANDED THAN TO LEAVE IT UP TO THE SUBJECTIVITY OF INDIVIDUAL PRACTITIONERS.

Q. AND ONCE THE POLICY WAS PUT INTO EFFECT, WHICH I THINK IS NOVEMBER OF '89, FROM THAT TIME FORWARD WAS THERE A SPECIFIC MEDICAL CRITERIA BY WHICH PATIENTS WERE TESTED?

A. YES, SIR. SEVERAL MEDICAL CRITERIA.

Q. AND DID IT MATTER WHETHER THE PATIENT WAS A NATIVE AMERICAN, AFRICAN AMERICAN, WHATEVER RACE

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A. NO. NO, SIR. AS I SAID, WE SPECIFICALLY PUT THE LIST OF INDICATORS TOGETHER AND INSISTED THAT LIST OF INDICATORS BE PART OF THE POLICY TO INSURE THAT PEOPLE WERE TESTED FOR MEDICAL INDICATIONS AND NOT FOR OTHER EXTRANEOUS INDICATIONS.

Q. NOW I HAVE GOT A BLOWUP OF THE MEDICAL INDICATIONS, I THINK IT'S AN EXHIBIT, LETTER FORM, THAT I WOULD LIKE TO GO OVER WITH YOU.

THE COURT: SHOW IT TO COUNSEL.

MR. WHERRY: I HAVE SEEN IT, JUDGE.

Q. (BY MR. HOOD, CONTINUING) DOCTOR, COME DOWN AND STAND ON THIS SIDE OF THIS POSTER FOR ME, PLEASE. MAYBE THIS WILL HELP

SO THE LAST JURY CAN SEE.
A. WELL THE INDICATIONS THAT WE USED, THESE ARE THE INDICATIONS THAT WERE DEVELOPED FOR THE POLICY THE M-7 POLICY. THE INDICATION THAT WERE USED PRIOR TO THE M-7 POLICY BASICALLY ARE THESE ONES LISTED UNDER "A" WHICH WERE THE OBSTETRICAL INDICATORS. AND THEN FOR THE PURPOSES OF THE POLICY WE ADDED THESE DOWN HERE WHICH WERE THE INVOLVEMENT OF THE PEDIATRICIANS AND NEONATOLOGISTS.
THE PATIENTS THAT WE FELT REQUIRED SCREENING WOULD BE THE PATIENTS THAT PRESENTED FOR LABOR - IN LABOR OR TO OUR DELIVERY SUITE WHO DID NOT AVAIL THEMSELVES TO ANY PRENATAL CARE AT ANY POINT DURING THAT PREGNANCY.
THEN THESE TWO HERE WOULD REALLY BE SOMEWHAT ANALOGOUS TO THAT. THESE WERE PATIENTS WHO EITHER HAD WHAT IS

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CALLED LATE PRENATAL CARE, WHICH FOR OUR PURPOSES WERE WOMEN WHO DID NOT COME FOR PRENATAL CARE UNTIL AFTER 24 WEEKS OF GESTATION, SO THIS IS REALLY THE LAST THIRD OF THEIR PREGNANCY, AND THEN PATIENTS WHO HAD INCOMPLETE PRENATAL CARE. AND WE USED THE CRITERIA OF PATIENTS WHO MAY HAVE COME

FOR PRENATAL CARE EARLY BUT THAT HAD HAD LESS THAN SIX PRENATAL CARE VISITS.

Q. LET ME STOP YOU. US MEN SOMETIMES DON'T UNDERSTAND THIS. HOW MANY WEEKS IS NORMAL, PREGNANCY?

A. PREGNANCY LASTS 42 WEEKS. TYPICALLY DIVIDED INTO TRIMESTERS, FIRST, SECOND, THIRD. FIRST WOULD BE UP TO 13 WEEKS AND SECOND UP TO 26 WEEKS, AND THE THIRD TRIMESTER WAS DELIVERY.

Q. AND WHEN IS A CHILD CONSIDERED VIABLE. AS TO THE FETUS?

A. FOR THE PURPOSES OF THIS POLICY WE USED 27 WEEKS. BABIES ARE CERTAINLY VIABLE AS EARLY AS 26 AND SOMETIMES 25 WEEKS, ALTHOUGH AT THAT POINT IT'S MUCH MORE RISKY TO BE BORN AND MOST OF THOSE BABIES WILL PROBABLY DIE AT 24 TO 25 WEEKS. BUT BY 27 WEEKS THERE IS AN EXCELLENT CHANCE OF SURVIVAL. I THINK THE MEDICAL UNIVERSITY HAS ABOUT 80 PLUS OR 80 PERCENT FOR SURVIVAL AT 27 WEEKS, WHICH WOULD BE ROUGHLY A LITTLE OVER TWO POUNDS.

Q. TWO POUNDS?

A. YES.

Q. THE FOURTH INDICATION IS PROBABLY THE MOST COMMON

COMPLICATION OF COCAINE ABUSE IN PREGNANCY, WHICH IS ABRUPTIO PLACENTA. THE PLACENTA IS AN ORGAN THAT PROVIDES THE EXCHANGE OF OXYGEN AND NUTRIENTS FOR THE BABY AND THE MOM. AND UNDER THE INFLUENCE OF COCAINE, FOR INSTANCE, THAT CAUSES AN INTENSE HYPERTENSIVE EPISODE IN THE USE OF COCAINE. BLOOD PRESSURE GOES UP DRAMATICALLY WHEN YOU TAKE COCAINE. AND THAT BLOOD PRESSURE CAN CAUSE A SEPARATION FROM THE PLACENTA, FROM THE UTERUS. BLEEDING BEGINS AND AS THE BLEEDING CONTINUES IT FORMS A CLOT THAT JUST GRADUALLY SEPARATES THE PLACENTA. SOMETIMES IT CAN BE SMALL AND THE BABY WILL SURVIVE IT AND THEN USUALLY IF THE ABRUPTION INVOLVES HALF OF THE PLACENTA OR MORE, IT WILL BE FATAL.

Q. IS THAT A MEDICAL CRISES?

A. OH, YES. I MEAN, AGAIN HALF THE TIME OR MORE IT CAN BE FATAL TO THE INFANT, THAT IS SEVERE ABRUPTION. AND IT'S ASSOCIATED WITH HEMORRHAGE AND SHOCK AND COAGULATING PROBLEMS IN THE MOTHER. SO, IT'S POTENTIALLY LIFE-THREATENING TO THE MOTHER AS WELL.

Q. AND CAN THAT BE CAUSED BY ONE USE OF COCAINE DURING PREGNANCY?

A. YES. YES. IT DOESN'T RELATE TO CHRONIC OR HOW MUCH YOU

USED IT OR HOW YOU TOOK IT, IT'S AN INDIVIDUAL RESPONSE THAT CAN BE CAUSED BY A SINGLE USE OF COCAINE.

Q. LET'S TALK ABOUT COCAINE FOR A MINUTE. FOR A CHILD IN UTERO, WHEN THE MOTHER INGESTED IT, WHAT DOES THAT DO TO THE

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LIFE SUPPORT FOR THAT BABY?

A. WELL, THE DRUG IS - CAUSES CONSTRICTION OF BLOOD VESSELS. IT'S A VASAL CONSTRICTOR. WHEN YOUR BLOOD VESSEL CONSTRICTS YOUR BLOOD PRESSURE GOES UP, SO TWO THINGS ARE HAPPENING TO THE FETUS. FIRST OF ALL THE BLOOD SUPPLY TO THE PLACENTA AND TO THE BABY IS GOING TO BE REDUCED BECAUSE OF THE CONSTRICTION OF THE BLOOD VESSELS. ONE OF THE OTHER THINGS THAT IS ASSOCIATED WITH COCAINE USED IN PREGNANCY IS GROWTH RETARDATION, WHICH IS MORE OF A CHRONIC EFFECT, IT'S A BABY THAT HAS HAD RESTRICTIONS TO ITS BLOOD SUPPLY ON MULTIPLE OCCASIONS THROUGHOUT THE PREGNANCY.

Q. AND IF THAT HAPPENS WHEN THE CHILD'S ARM IS DEVELOPING OR HAND IS DEVELOPING, THE MOTHER USES COCAINE, WHAT CAN HAPPEN TO THE ARM?

MR. WHERRY: OBJECTION TO THE LEADING NATURE OF THE QUESTION.

Q. (BY MR. HOOD, CONTINUING) WHAT CAN HAPPEN TO THE ARM OR THE HAND?

A. WELL, IT'S REPORTED BY SOME INVESTIGATORS THAT CONGENITAL ANOMALIES CAN BE ASSOCIATED WITH COCAINE INGESTION. AND THE PROPOSED MECHANISM IS AT THE TIME OF FETAL DEVELOPMENT, THE FIRST 13 - 12 OR 13 WEEKS OF PREGNANCY, IF AT THAT TIME THERE IS INTERRUPTION OF THE OXYGEN SUPPLY, IT INTERFERES WITH THE DEVELOPMENT OF THAT PARTICULAR ORGAN SYSTEM. AND THE EXAMPLE WAS AN ARM OR A LEG, BUT THERE ARE MANY - IT COULD HAPPEN TO

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ANY ORGAN SYSTEM.

AND PROBABLY THE ONE THAT I HAVE SEEN MOST FREQUENTLY RELATED TO COCAINE USE IS A DISRUPTION OF THE URINARY TRACT. THE DEVELOPMENT OF THE URINARY TRACT. SO THAT BLOCKAGE TO ESCAPE URINE AND WHATEVER ABNORMALITIES AND HOW THE KIDNEYS DEVELOP. SO, GOING BACK TO, THE QUESTION WAS, THE TWO EFFECTS THAT COCAINE HAS ON. PREGNANCY IS TO CONSTRICT THE BLOOD VESSELS AND REDUCE SUPPLY OF OXYGEN AND NUTRIENTS TO THE BABY.

AND ALSO SECONDARY TO THAT, BLOOD PRESSURE GOES UP,

AND THE PLACENTA IS REALLY A HUGE VASCULAR ORGAN, IT'S AN INTERMINGLING OF SMALL BLOOD VESSELS BETWEEN THE MOTHER AND BABY'S CIRCULATION. THE BLOOD DOESN'T ACTUALLY CROSS, BUT THE BABY'S VESSELS ARE VERY THIN WALLS, AND BLOOD AND OXYGEN AND NUTRIENTS AND THINGS DIFFUSE CIRCULATION BY THE MOTHER. IF ONE OF THOSE SMALL VESSELS RUPTURES AND BLEEDING OCCURS, THAT CLOT, THAT BLEEDING WILL DISRUPT OTHER VESSELS AND CAUSE MORE BLEEDING AND LEAD TO THE PLACENTAE ABRUPTION THAT I MENTIONED EARLIER.

Q. OTHER CRITERIA UNDER THE POLICY WHICH WOULD MEAN THE MOTHER WOULD GET TESTED.

A. INTRAUTERINE FETAL DEATH OR STILLBIRTH, PREMATURE LABOR. WHEN WE COULD FIND NO OTHER OBVIOUS CAUSE. FIRST INSTANCE, WOMEN WITH TWINS, HUGE RISK FACTOR. IF THAT PATIENT WOULD HAVE AN OBVIOUS CAUSE, URINARY TRACT INFECTION, IF THEY HAD

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BEEN IN A CAR ACCIDENT, THAT PATIENT WOULDN'T HAVE BEEN SCREENED BUT SOMEBODY WHO HAD NO OTHER APPARENT REASON TO BE IN LABOR WOULD BE SOMEBODY THAT WE WOULD SCREEN. COCAINE HAS BEEN SHOWN TO STIMULATE UTERINE CONTRACTIONS, AND THE EXACT

MECHANISM I DON'T THINK I CAN EXPLAIN.
Q. DEFINE THIS WORD PRE-TERM. PRE-TERM LABOR?
A. PRE-TERM LABOR IS ENTERING LABOR PRIOR TO 37 WEEKS GESTATION. WE SAY PREGNANCY LASTS 40 - WOMEN ARE CONSIDERED TO BE AT TERM BETWEEN - BETWEEN 37 AND 42 WEEKS. ANYTHING LESS THAN 37 IS CONSIDERED PRE-TERM. OBVIOUSLY THE MORE PRE-TERM YOU ARE THE GREATER RISK OF BEING -
Q. IN OTHER WORDS, IF THE BABY COMES BEFORE IT WAS 37 WEEKS?
A. YES, SIR.
Q. WHAT ARE WE DEALING WITH MEDICALLY?
A. WELL, IT WOULD DEPEND ON THE TIME AND GESTATION. A BABY BORN AT 36 WEARS. IS GOING TO DO, VIRTUALLY AS WELL AS A BABY BORN AT TERM. THEY MAY HAVE A LITTLE JAUNDICE, THEY MAY HAVE A LITTLE FEEDING PROBLEM, DIFFICULTY WITH TEMPERATURE REGULATION, BUT THEY'RE NOT GOING TO HAVE MAJOR COMPLICATIONS. A BABY BORN AT 24 WEEKS IS GOING TO DIE. MAYBE AFTER A LONG PERIOD OF TIME IN THE NURSERY, BUT IT'S VERY UNLIKELY TO SURVIVE. WE SEE MORE PRE-TERM LABOR IN WOMEN BETWEEN 29 AND 31 WEEKS. IF YOU GRAPHED IT OUT, THAT'S WHEN MOST PRE-TERM LABOR SEEMS TO OCCUR. AND A BABY THAT IS

DELIVERED AT 30 WEEKS GESTATION HAS AN 85 PERCENT CHANCE OF

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SURVIVAL. BUT THE MAJORITY OF THOSE BABIES WOULD GO TO THE INTENSIVE CARE UNIT, THE MAJORITY WOULD PROBABLY REQUIRE BEING ON A VENTILATOR FOR A VARIABLE PERIOD OF TIME. AND THEY WOULD BE AT RISK FOR OTHER COMPLICATIONS, WHICH ARE LESS FREQUENT BUT VERY SEVERE, SUCH AS INTRACRANIAL HEMORRHAGE, A BOWEL THAT BECOMES ISCHEMIC AND HAS TO BE REMOVED. INFECTION, JAUNDICE AND PROBLEMS SUCH AS THAT.

SO A BABY BORN AT 30 WEEKS GESTATIONAL, A RULE OF THUMB THAT WE USE WHEN WE ADVISE MOMS IS THE BABY WILL PROBABLY STAY IN THE HOSPITAL AS LONG AS IT WOULD HAVE NEEDED TO STAY IN YOUR TUMMY BEFORE IT GOES HOME. SO 30-WEEK BABY YOU'RE LOOKING AT PROBABLY SEVEN TO EIGHT MONTHS -

MR. WHERRY: OBJECTION, YOUR HONOR, ON RELEVANCE. THIS HAS NOTHING TO DO WITH THE LAWSUIT. THE LAWSUIT HAS TO DEAL WITH THE POLICY. NOT WHETHER COCAINE IS GOOD FOR PREGNANT WOMEN TO USE OR NOT.

THE COURT: WHETHER COCAINE IS WHAT?

MR. WHERRY: GOOD FOR PREGNANT WOMEN TO USE OR NOT.

IT HAS TO DO WITH THE POLICY AND THE WAY THEY FRAMED IT RATHER THAN NARROWLY TAILORING IT. SO RATHER THAN GOING THROUGH ALL THE CRITERIA AND TELLING US ALL THE THINGS THAT GO WRONG, THE ONLY PURPOSE IS 403 AND I SUGGEST THAT THIS JUST SIMPLY ISN'T RELEVANT.

THE COURT: I DON'T KNOW THAT IT'S APPROPRIATE OR NECESSARY TO GO DOWN THIS CHART, WITH EACH WITNESS. BUT WE DO

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HAVE A NUMBER OF DEFENDANTS AND THEY ARE CHARGED WITH CERTAIN ACTS THAT ALLEGEDLY DAMAGED THE PLAINTIFFS.

MR. WHERRY: YES, SIR.

THE COURT: AND I THINK THEY HAVE A RIGHT TO EXPLAIN WHY THEY DID WHAT THEY DID, AND THAT INCLUDES EXPLAINING WHY THEY TOOK THEIR ACTIONS OR WHY THEY ACTED OR WHAT KNOWLEDGE THEY HAD OR WHAT THEY HAVE BEEN TOLD. BASICALLY TO PUT IT SHORT, WHAT WAS IN THEIR HEAD. AND SO I THINK HE HAS A RIGHT TO DO THAT. I THINK ALL OF THE DEFENDANTS HAVE THE RIGHT TO DO THAT. WHETHER I'LL PERMIT COUNSEL TO DO IT IN THE MANNER HE IS DOING IT WITH ALL DEFENDANTS REMAINS TO BE SEEN. BUT, FOR THE TIME BEING, I THINK THE QUESTION WAS APPROPRIATE AND I

OVERRULE YOUR OBJECTION.
Q. (BY MR. HOOD, CONTINUING) DR. NEWMAN, YOU TALKED ABOUT THE BABIES GOING TO THE NICU, WHICH IS BASICALLY THE INTENSIVE CARE UNIT FOR BABIES. AS Y'ALL WERE FORMULATING THESE CRITERIA TO DETERMINE WHETHER OR NOT TO TEST WOMEN, WOMENS' URINE, WAS COST A CONSIDERATION? THE COST?
MR. WHERRY: OBJECTION. YOU ALREADY RULED ON THAT.
THE COURT: NO.
MR. WHERRY: MAY I BE HEARD AT SIDEBAR.
THE COURT: SIR?
MR. WHERRY: MAY I BE HEARD AT SIDEBAR.
THE COURT: ABSOLUTELY.
(SIDEBAR AS FOLLOWS:)

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MR. HOOD: YES, SIR.
THE COURT: AN OBJECTION WAS MADE TO THAT. I OVERRULED THE OBJECTION. LET'S JUST ASK HIM WHAT FINANCIAL MATTERS HE GAVE CONSIDERATION TO AND WHAT CONSIDERATION HE GAVE TO THEM. NOW THAT'S A NON-LEADING QUESTION. TWO OF THEM.
MR. HOOD: YES, SIR.
Q. (BY MR. HOOD, CONTINUING) WOULD YOU ANSWER THOSE QUESTIONS?
A. IN THE FORMULATION OF THIS POLICY WE DID GIVE

CONSIDERATION TO FINANCIAL ISSUES IN TERMS OF OUR CONCERN OVER THE COSTS THAT COULD BE ENCOUNTERED IN TAKING CARE OF BABIES THAT WERE BORN PREMATURELY OR WITH OTHER - WITH MALFORMATIONS OR OTHER PROBLEMS THAT WOULD REQUIRE EITHER PROLONGED NEONATAL INTENSIVE CARE OR EVEN LONGER TERM CARE. IN DISCUSSIONS IN GENERAL WITH THE NEONATOLOGIST, WE, FROM LONG-STANDING, WE ARE AWARE OF THE VERY HIGH COSTS OF INTENSIVE CARE UNIT STAYS.

MR. WHERRY: I OBJECT, TO THAT.

THE COURT: OBJECTION OVERRULED. YOU MAY PROCEED.

A. SPECIFIC NUMBERS AS TO THE COSTS OF VARIOUS SPECIFIC BABIES WHO MAY HAVE BEEN BORN DUE TO COCAINE INGESTION I COULD NOT TELL YOU. JUST AS EVIDENCE OF MY CONCERN OVER THE COST, I WOULD REFER TO THE LETTER THAT I SENT TO THE MICH COUNCIL THAT WE HAVE TALKED ABOUT EARLIER WHERE I POINTED OUT THAT I FELT THAT THE COST OF TAKING CARE OF THESE BABIES AND THE

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CONTINUING COSTS THAT MAY OCCUR WAS ONE REASON WHY THIS STATE SHOULD HAVE AN INTEREST IN TRYING TO REDUCE THIS.

Q. (BY MR. HOOD, CONTINUING) ALL RIGHT, SIR. AND NOT FOR

THE PURPOSE OF THE TRUTH OF THE NUMBER, BUT I WOULD LIKE TO NOW ASK HIM WHAT HIS UNDERSTANDING WHEN THE POLICY WAS FORMULATED WHAT THE AVERAGE NUMBERS WERE OF THE COST OF A NORMAL DELIVERY VERSUS THE COST OF TAKING CARE OF THE CHILD IN THIS NICU?

MR. WHERRY: I WOULD LIKE TO BE HEARD ON THAT.

THE COURT: OKAY.

MR. WHERRY: THE NICU UNIT DOESN'T HAVE ANYTHING SPECIFICALLY TO DO WITH COCAINE. IT TAKES CARE OF, ALL OF THE TESTIMONY HAS BEEN, OF EVERY PREMATURE CHILD THAT NEEDS NEONATAL INTENSIVE CARE. HE'S ALREADY SAID THAT HE KNOWS THE COST OF THAT BUT NOT AS RELATED, TO COCAINE. SO IT HAS NOTHING TO DO WITH THIS CASE. THE COST OF TAKING CARE OF A BABY IN THAT UNIT HAS NOTHING MORE TO DO WITH IT THAN TAKING CARE OF A BROKEN LEG.

THE COURT: I THINK HE HAS ANSWERED THE QUESTION, BUT I'M NOT POSITIVE, AND I'LL PERMIT HIM TO ANSWER IT AGAIN. PHRASE IT - RESTATE IT, MR. HOOD.

Q. (BY MR. HOOD, CONTINUING) WHEN THE POLICY WAS FORMULATED, WHAT WAS YOUR UNDERSTANDING OF THE AVERAGE COSTS?

THE COURT: AVERAGE COSTS OF WHAT?

MR. HOOD: NORMAL DELIVERY AND OF A CHILD THAT HAD

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CLINICS RECEIVED LETTER FROM THE MATERNAL FETAL, MEDICINE PHYSICIAN ABOUT DRUG POLICY AND THE HARMS OF DRUG ABUSE AND PREGNANCY AND THE NEED TO STOP. AND SAW THE VIDEOTAPE THAT WAS PREPARED REGARDING THAT SAME ISSUE. THAT WAS ROUTINE FOR EVERYBODY WHO ATTENDED OUR PRENATAL CLINICS.

Q. ALL RIGHT. THAT LETTER IS. JOINT EXHIBIT 10, FOR THE BENEFIT OF THE JURY. IT'S IN EVIDENCE. THE URINE DRUG SCREEN IS DONE AND IF IT'S POSITIVE, THEN WHAT WAS DONE UNDER THE POLICY?

A. IF THE URINE DRUG SCREEN WAS POSITIVE FOR THE FIRST TIME, THEY WERE SHOWN AGAIN THE VIDEO THAT THEY HAD RECEIVED BEFORE, THEY WERE SPOKEN WITH BY THE PHYSICIANS, AS I HAVE TALKED ABOUT EARLIER. THEY WERE BASICALLY WHAT IS OUTLINED ON THE LIST THERE. THEY WERE COUNSELED AS TO THE FACT THAT THEY WERE FOUND TO BE POSITIVE FOR DRUGS. THE EFFECTS OF THOSE DRUGS COULD HAVE HAD - WOULD HAVE ON THEIR PREGNANCY OUTCOME, THE FACT THAT IT'S HARMFUL AND THAT THEY HAVE - THEY HAVE ALSO

VIOLATED THE LAW.
THEY WERE PROVIDED AT THAT TIME A LETTER FROM THE SOLICITOR'S OFFICE THAT INDICATED THAT THEY HAVE TESTED POSITIVE. THIS IS IN VIOLATION OF THE LAW. BUT THAT IF THEY CAN REFRAIN FROM FURTHER DRUG TAKING AND ATTEND SUBSTANCE ABUSE TREATMENT AND CONTINUE WITH THEIR PRENATAL CARE, THAT AMNESTY FOR THAT WOULD BE GRANTED. BUT IF THEY DID NOT COMPLY WITH THOSE RECOMMENDATIONS TO STOP FURTHER DRUG TAKING, DID

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NOT COMPLY WITH THE RECOMMENDATION TO RECEIVE SUBSTANCE ABUSE TREATMENT, AND IF THEY WERE FOUND, TO BE POSITIVE AGAIN, THAT THEY WERE SUBJECT TO POSSIBLE ARREST.

Q. NOW, IN THOSE STEPS THAT YOU'VE JUST GONE THROUGH, IS THERE A POLICEMAN INVOLVED?

A. NO, SIR.

Q. IS A PROSECUTOR FROM THE NINTH CIRCUIT JUDICIAL CIRCUIT SOLICITOR'S OFFICE INVOLVED?

A. NO. WITH THE EXCEPTION OF THE LETTER THAT WE PROVIDED WHICH HAD BEEN PROVIDED BY THE SOLICITOR'S OFFICE.

Q. AND WAS ONLY ONE INDIVIDUAL OR CASE MANAGER FOR THESE PATIENTS, SHIRLEY BROWN WAS SHE THE ONLY PERSON THAT DID ANYTHING UNDER THIS POLICY?

A. NO, SIR. THE EVALUATION AND POTENTIAL TESTING OF PATIENTS, IF THEY MET THE INDICATED CRITERIA, THAT WAS DONE BY THE MEDICAL STAFF. IF THE PATIENT THEN TESTED POSITIVE, YOU MOVED ON TO THAT NEXT LEVEL THAT I JUST DESCRIBED. THAT WAS DONE IN CASES, SOME CASES BY MS. BROWN. WE HAD - BUT THAT WAS IN HER ROLE AS CASE MANAGER. WE HAD OTHER CASE MANAGERS WHO ALSO SERVED THAT FUNCTION. AND WHEN THE CASE MANAGERS WERE NOT AVAILABLE BASED ON VACATION OR ILLNESS OR WHATEVER, THAT MAY HAVE BEEN DONE BY A SOCIAL WORKER OR BY ONE OF THE PHYSICIANS' STAFF AS I ALSO MENTIONED EARLIER.

MR. WHERRY: YOUR HONOR, NOW THAT MR. HOOD IS NO LONGER USING THE BLOWUP, MAY WE HAVE IT REMOVED FROM BEING SET

[NEWMAN 245]

UP IN FRONT OF THE JURY SO THEY CAN CONTINUE TO READ IT DURING THE REST OF THE TESTIMONY.

THE COURT: YES.

MR. WHERRY: THANK YOU.

MR. HOOD: I'M READING IT. I WOULD LIKE TO READ IT RIGHT WHERE IT IS. IT'S AN EXHIBIT IN EVIDENCE.

THE COURT: GO AHEAD.

Q (BY MR. HOOD, CONTINUING) WAS THERE A POLICEMAN THAT HAD

AN OFFICE OR A DESK IN THE HOSPITAL?
A. NOT THAT I'M AWARE OF. THE HOSPITAL SECURITY HAD OFFICES VARIOUS PLACES, NONE ON THE LABOR, AND DELIVERY OR ANTEPARTUM OR POSTPARTUM FLOOR
Q. AND IF THE PATIENT SUCCESSFULLY COMPLETED AND WENT TO THE SUBSTANCE ABUSE TREATMENT, WAS THAT THE END OF IT?
A. YES, SIR.
Q. AND IF THE PATIENT DIDN'T, THEN WHAT HAPPENED?
A. WHEN THEY RETURNED FOR DELIVERY IF THEY TESTED POSITIVE AGAIN, THEY WOULD - THE SOLICITOR'S OFFICE OR THE POLICE - THE POLICE OR SOLICITOR'S OFFICE WOULD BE NOTIFIED OF THE PATIENT'S FAILURE TO COMPLY WITH THE POLICY AND TO HAVE REPEAT POSITIVE TESTING.
Q. NOW AT THE SAME TIME THIS POLICY WAS GOING INTO EFFECT YOU WROTE A LETTER TO THE OB/GYN RESIDENTS NOVEMBER 14, 1989. AND YOU TALKED ABOUT NOT KNOWING THEM, BUT YOU TALKED ABOUT DIFFERENT PATIENTS. AND THIS LETTER HAS BEEN PUT IN

[NEWMAN 246]

EVIDENCE. WHAT WAS THE PURPOSE OF YOU WRITING THIS LETTER TO THESE MEDICAL RESIDENTS?
A. AS I MENTIONED EARLIER, WE HAD WEEKLY CONFERENCES WITH

THE RESIDENTS. DIFFERENT DIVISIONS WOULD HAVE DIFFERENT CONFERENCES THROUGHOUT THE WEEK, BUT OURS WAS ON WEDNESDAY AND WE WOULD TALK ABOUT VARIOUS TOPICS, AND ON MORE THAN ONE OCCASION WE TALKED ABOUT THE POLICY. THE RESIDENTS HAD QUESTIONS ABOUT IT HOW IT WORKED. QUESTIONS. SOME OF THE QUESTIONS THAT WERE - HAVE BEEN ASKED TODAY. AND ONE OF THEIR QUESTIONS WAS WHAT BECAME OF THE WOMEN WHO WERE ARRESTED.

AND TRYING TO ANSWER THAT QUESTION, I ASKED SHIRLEY BROWN, I BELIEVE, FOR INFORMATION AS TO WHAT BECAME OF THE FIRST SEVERAL PATIENTS WHO HAD BEEN ARRESTED. AND THAT WAS PROVIDED TO ME AS WELL AS SOME INFORMATION ABOUT SEVERAL PATIENTS WHO HAD TESTED POSITIVE BEFORE THE POLICY AND WHAT BECAME OF THEM.

THE PURPOSE OF GAINING THAT INFORMATION WAS TO TRY TO SHOW THE RESIDENTS THAT THE GOAL OF THIS POLICY WAS NOT TO LOCK PEOPLE UP AND THROW AWAY THE KEY, THE GOAL OF THE POLICY WAS TO USE THE LEGAL AUTHORITY OF THE STATE TO HELP PEOPLE GET INTO SUBSTANCE ABUSE TREATMENT. AND IN FACT THAT'S WHAT HAPPENED TO THE MAJORITY OF WOMEN WHO WERE TAKEN THROUGH THIS POLICY.

Q. WE HEARD -

[NEWMAN 247]

A. IF I COULD, HE JUST ASKED - HE ASKED ME A QUESTION EARLIER ABOUT PUNITIVE. I DON'T BELIEVE THAT THAT IS PUNITIVE. I THINK -

MR. WHERRY: YOUR HONOR, I OBJECT TO WHAT THIS WITNESS BELIEVES. MAY I ASK THAT IT BE STRICKEN. IT WAS GRATUITOUS ON NO QUESTION PENDING.

MR. HOOD: THERE WAS A QUESTION ABOUT THE LETTER.

THE COURT: WAIT JUST A MINUTE. I'LL PERMIT THE ANSWER.

Q. (BY MR. HOOD, CONTINUING)WHEN YOU WERE ASKED EARLIER ABOUT THE LETTER, THE WORD PUNITIVE APPEARED IN THIS THREE-PAGE LETTER. I WOULD LIKE FOR YOU TO EXPLAIN WHY AND WHAT YOUR MEANING WAS TO THE JURY?

A. AS I WAS SAYING, THAT THE POLICY WAS FREQUENTLY REFERRED TO AS BEING PUNITIVE. FROM THE - I WOULD - I WOULD BE WILLING TO AGREE THAT IT'S POSSIBLY COERCIVE, BUT I DID NOT BELIEVE THAT IT WAS PUNITIVE IN THAT THE RESULTS OF THE POLICY WERE TO TRY TO GET WOMEN INTO SUBSTANCE ABUSE TREATMENT SO THAT THEY COULD, YOU KNOW, GET THEIR ADDICTION TAKEN CARE OF

AND - AND IMPROVE THEIR LIFE. AND ALSO TO PROTECT THE INFANTS. EITHER IN UTERO OR AFTER DELIVERY. AND FROM THAT PERSPECTIVE MY OPINION, WHICH IS WHAT I SPOKE TO IN THE THIRD PARAGRAPH OF THIS LETTER THAT I READ EARLIER, IS THAT I DON'T CONSIDER THAT PUNITIVE. I CONSIDER THAT AN EFFORT THAT WE MADE, YOU COULD CALL IT INNOVATIVE, YOU- IT'S BEEN CALLED A

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[NEWMAN 249]

THE COURT: I OVERRULE THE OBJECTION.

A. SHIRLEY BROWN'S ROLE WAS AS THE CASE MANAGER. SHE WAS TO BE NOTIFIED OF POSITIVE URINE DRUG SCREENS WHEN THEY OCCURRED AND PROVIDE THE FOLLOW-UP THAT WAS OUTLINED ON THE - IN THE POLICY THAT WE JUST WENT OVER.

ON OCCASION WHEN A PATIENT CAME THROUGH WITH A CLEAR INDICATION THAT SHE SHOULD HAVE BEEN TESTED, IF THAT WAS MISSED BY WHOEVER THE PHYSICIAN WAS PROVIDING CARE, IT WAS THE PHYSICIAN'S RESPONSIBILITY TO IDENTIFY THOSE PATIENTS MEETING INDICATIONS AND TO OBTAIN A URINE DRUG SCREEN IN THOSE CASES TO CHOOSE NOT TO DO THAT WE FELT WAS SUBJECTIVE AND INAPPROPRIATE.

MR. WHERRY: I OBJECT TO WHAT SHIRLEY BROWN'S ROLE IS. HE IS NOW TALKING ABOUT WHAT DOCTORS SHOULD HAVE DONE.

THE COURT: THE STATEMENT WAS TO CHOOSE NOT TO DO THAT.

THE WITNESS: YES.

THE COURT: WHAT DO YOU MEAN TO CHOOSE?

THE WITNESS: IF A PHYSICIAN SAW A PATIENT THAT MET ONE OF THE INDICATORS THAT WE HAD OUTLINED FOR URINE DRUG SCREEN TESTING AND EITHER CHOSE NOT TO DO IT OR DIDN'T RECOGNIZE THIS WAS AN INDICATOR ON THE LIST, SHIRLEY BROWN MAY HAVE IDENTIFIED THAT AS BEING AN OVERLOOKED TEST AND MAY HAVE ADDRESSED THAT TO THE PHYSICIAN. SIMILARLY IF I WOULD HAVE IDENTIFIED IT AS BEING A PATIENT WHO HAD BEEN OVERLOOKED, I

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[NEWMAN 253]

OBJECTION WAS MADE WAS THAT EXAMPLES OF VARIOUS MANDATORY TESTING IN HOSPITALS WERE GOING TO BE BROUGHT OUT SO THAT THE JURY MAY COMPARE THOSE WITH WHAT WERE DONE HERE IN AN ATTEMPT TO SHOW IF THAT WAS OKAY, SYPHILIS TESTING, THAN THIS IS OKAY. AND I THINK THAT IF THE JURY DID THAT, THAT IT WOULD BE A CONFUSION OF THE ISSUES IN THIS CASE. THE FACT THAT A

SYPHILIS TESTING MAY HAVE BEEN LEGITIMATE, MAY NOT HAVE BEEN LEGITIMATE, HAS NO BEARING ON THIS CASE WHATSOEVER. WE DON'T KNOW WHO WAS, WE DON'T KNOW HOW MANY WERE, WE DON'T KNOW THE CRITERIA, WE ARE REALLY COMPARING APPLES AND ORANGES, OR IF IT'S THAT CLOSE A COMPARISON. AND ANY POSSIBLE RELEVANCE IS SO FAR OUTWEIGHED BY THE - I THINK ACTUAL PREJUDICE AND PROBABLE CONFUSION, AND I'M GOING TO SUSTAIN THE OBJECTION.

MR. WHERRY: THANK YOU.

THE COURT: OKAY.

Q. (BY MR. HOOD, CONTINUING)DOCTOR, IS IT YOUR UNDERSTANDING THAT WITHOUT AN AMNESTY POLICY IN PLACE, THAT DOCTORS WOULD BE REQUIRED TO REPORT TO THE POLICE THE FIRST POSITIVE DRUG TEST A PREGNANT WOMEN HAD?

A. YES, SIR.

MR. WHERRY: OBJECTION, LEADING.

THE COURT: I SUSTAIN THE OBJECTION. LADIES AND GENTLEMEN OF THE JURY, DISREGARD THE QUESTION AND THE ANSWER THERETO.

Q. (BY MR. HOOD, CONTINUING) WHAT WAS YOUR UNDERSTANDING

[NEWMAN 254]

WITH REGARD TO THE REQUIREMENT TO REPORT WOMEN WITH A POSITIVE

URINE DRUG SCREEN?
A. WE WERE INFORMED THAT IT WAS OUR RESPONSIBILITY.
MR. WHERRY: I OBJECT, HEARSAY. WE WERE INFORMED.
THE COURT: WELL, LET ME - LET ME SEE YOU UP HERE A MOMENT.
(SIDEBAR AS FOLLOWS:)
THE COURT: WE HAVE GOT A DOUBLE-EDGE PROPOSITION. AS FAR AS WHAT. THE CHILD ABUSE STATUTE PERMITS OR REQUIRES CONCERNING REPORTING AS A MATTER OF LAW, I BELIEVE THAT I'LL PROBABLY HAVE TO INSTRUCT THE JURY ON THAT AT SOME POINT IN TIME. NOW, IN THE MEANTIME THIS WITNESS HAS BEEN SUED FOR ACTUAL AND PUNITIVE DAMAGES IT SEEMS TO ME THAT HIS KNOWLEDGE, HIS INTENT, HIS MOTIVES ARE RELEVANT ON THAT POINT. AND IF HE WAS TOLD BY THE GENERAL COUNSEL, AND HE HAS ALREADY SAID THAT HE WAS TOLD BY GENERAL COUNSEL, HE HAS ALREADY BEEN ASKED THIS QUESTION ABOUT THREE TIMES THAT IF HE WAS TOLD BY GENERAL COUNSEL IT WAS LEGAL, THEN IT SEEMS TO ME THAT THAT HAS A BEARING ON THE QUESTION OF PUNITIVE DAMAGES, IF NOTHING ELSE.
Q. (BY MR. HOOD, CONTINUING)WHAT WAS YOUR UNDERSTANDING OF THE REQUIREMENT?
A. I WAS TOLD DIRECTLY BY INDIVIDUALS I FELT WERE

RESPONSIBLE FOR GUIDING ME AS TO THE LEGALITIES OF MY ACTIONS
THAT IT WAS OUR RESPONSIBILITY TO REPORT POSITIVE URINE DRUG

[NEWMAN 255]

SCREENS UNDER THE LAW, PARTICULARLY AS IT' RELATES TO THE CHILD
ABUSE STATUTES. I WAS ALSO TOLD THAT - THAT THE
PROSECUTORIAL OFFICES HAD THE LEGALITY OF - OR THE DISCRETION
THAT THEY COULD PROVIDE AMNESTY AND NOT NECESSARILY ACT ON
THAT REPORT, BUT THAT IT WAS MY RESPONSIBILITY TO REPORT IT.
Q. AND THE SUBSTANCE ABUSE COUNSELING UNDER THE POLICY, WAS
THAT DONE BY THE MEDICAL UNIVERSITY?
A. NO, SIR.
Q. AND THE DIAGNOSIS OF SUBSTANCE ABUSE, PROBLEM WITH A
MATERNAL PATIENT, WAS. THAT DONE BY THE MEDICAL UNIVERSITY?
A. YES, SIR.
Q. BY THE WAY, MS. SHOWERS REMINDED ME, YOU - I DIDN'T ASK
YOU, HOW MANY YEARS YOU GOT THAT GOLDEN APPLE AWARD?
A. I WAS ALWAYS A BRIDE. I NEVER WON IT, BUT I'VE BEEN
NOMINATED A NUMBER OF TIMES.
Q. FIVE TIMES?
A. YES, SIR.
THE COURT: YOU DIDN'T FORGET TO ASK. YOU ASKED HIM
EARLIER.

MR. HOOD: I THOUGHT THAT I DID, TOO. SHE SAID THAT I DIDN'T. I WANTED TO MAKE SURE.

THE COURT: BUT THAT DOESN'T MAKE TEN NOW.

Q. (BY MR. HOOD, CONTINUING) YOU ASKED ABOUT ALCOHOL, IS IT ILLEGAL FOR A MOTHER THAT'S PREGNANT TO DRINK ALCOHOL?

A. NO, SIR.

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[NEWMAN 267]

POPULATION AT MUSC IS DISPARATE FROM THE POPULATION AS A WHOLE AS FAR AS RACIAL BALANCE OR RACIAL MAKEUP?

A. YES, SIR.

Q. AND IN FACT, THE POPULATION OF SOUTH, CAROLINA IN GENERAL TERMS, 30 PERCENT BLACK, 70 PERCENT WHITE?

A. I DON'T KNOW FOR SURE, BUT I WOULD AGREE WITH THAT.

Q. SO, DOCTOR, YOUR SIX-TO-ONE PREVALENCE WOULD BE GATHERED FROM A POPULATION THAT WAS DISPARATE BY 50 PERCENT, FAIR?

A. WELL THAT SIX-TO-ONE NUMBER WAS FROM THAT REPORT.

Q. I MISUNDERSTOOD. I THOUGHT THE TESTIMONY WAS THAT THAT WAS BASED ON YOUR EXPERIENCE?

A. NO, I SAID THAT THAT REPORT WAS CONSISTENT WITH MY EXPERIENCE

Q. SO YOUR EXPERIENCE WAS SIX TO ONE?

A. YES.
Q. IN A POPULATION THAT IS A DISPARATE TO THE POPULATION AS A WHOLE?.
A. YES, I GUESS SO.
Q. NOW, THE NEXT QUESTION, DOCTOR, IS THAT - LET ME CHANGE MY LINE OF THOUGHT, IF I MAY. IN ONE OF THESE THINGS THAT MR. HOOD HELD UP FOR YOU, IT INDICATES THAT ONE OF THE REASONS FOR TESTING URINE FOR DRUGS IS HISTORY OF ALCOHOL ABUSE, FAIR?
DRUG OR ALCOHOL ABUSE?
A. YES, SIR.
Q. SO IF A PATIENT CAME IN PREGNANT WITH A HISTORY OF

[NEWMAN 268]

ALCOHOL ABUSE, THAT WOULD LEAD YOU TO TEST HER FOR DRUGS?
A. THE DRUG TEST THAT WE USED WAS A BROAD-BASED TEST THAT INCLUDED ALCOHOL AS WELL AS NUMEROUS DRUGS.
Q. OKAY. IF SHE TESTED POSITIVE FOR ALCOHOL ABOVE .10, A SIGNIFICANT AMOUNT OF ALCOHOL?
A. YES, SIR.
Q. THAT WOULD BE A DANGER TO FETAL HEALTH, FAIR?
A. YES, SIR.
Q. SHE WAS NOT REPORTED TO THE, POLICE, WAS SHE?
A. NO, SIR.
Q. NOW, DOCTOR, ALCOHOL ABUSE IN PREGNANCY CREATES A

HIGH-RISK OF POOR FETAL OUTCOME, DOESN'T IT?

MR. HOOD: IF THE COURT, PLEASE, OBJECT ON THE GROUND OF RELEVANCY.

THE COURT: I'LL PERMIT HIM TO ASK IT. OBJECTION OVERRULED.

MR. WHERRY: THANK YOU.

Q. (BY MR. WHERRY, CONTINUING) ALCOHOL ABUSE IN PREGNANCY CREATES A HIGH-RISK OF POTENTIAL FOR POOR FETAL OUTCOME, DOESN'T IT?

A. YES, SIR.

Q. NOW, DOCTOR, TO THE FETUS IT MAKES NO DIFFERENCE WHETHER THE ABUSE IS FROM COCAINE, HEROIN, METHAMPHETAMINES OR ALCOHOL, DOES IT?

A. THE DIFFERING DRUGS DO HAVE DIFFERING EFFECTS ON THE

[NEWMAN 269]

FETUS, BUT --

Q: AS FAR AS ABUSE, IT'S ABUSE OR NOT?

MR. HOOD: I OBJECT TO CUTTING HIM OFF.

THE COURT: I THINK IT'S APPROPRIATE. GO AHEAD.

Q. (BY MR. WHERRY, CONTINUING) THAT BEING SAID, ABUSE IS ABUSE, RIGHT?

A. YES.

Q. AND YOU RECOGNIZE YOUR RESPONSIBILITY AS A PHYSICIAN TO

REPORT CHILD ABUSE TO THE POLICE, DIDN'T YOU?
A. WE DID NOT DIMINISH THE IMPORTANCE OF ALCOHOL WHEN WE WOULD IDENTIFY WOMEN WHO WERE ABUSING ALCOHOL WE WOULD DO WHAT WE COULD DO TO TRY TO PREVENT THAT. AND THAT WOULD INCLUDE COUNSELING, REFERRAL TO SOCIAL SERVICES, A RECOMMENDATION TO GO TO SUBSTANCE ABUSE TREATMENT, INSTRUCTIONS AS TO WHAT THE RISKS OF ALCOHOL IS TO A BABY. BUT SINCE ALCOHOL IS NOT AN ILLEGAL SUBSTANCE THERE IS NO - WE DID NOT HAVE RECOURSE.
THE POLICE WEREN'T INTERESTED IN THAT.
Q. DOCTOR, I JUST HAVE ONE MORE QUESTION IN THAT LINE OR ONE MORE GROUP OF QUESTIONS. MY HAND IS NOT AN ILLEGAL THING IS IT?
A. NO, SIR.
Q. BUT IF I BEAT MY CHILD WITH IT, THAT IS ABUSING A CHILD, ISN'T IT?
A. YES, SIR, POTENTIALLY.
Q. AND YOU WOULD REPORT THAT, WOULDN'T YOU?

[NEWMAN 270]

A. YES, SIR.
Q. SO THE FACT THAT THE USE OF ALCOHOL IS NO MORE ILLEGAL THAN THE USE OF MY HAND REALLY HAS NOTHING TO DO WITH THE CHILD THAT IS BEING ABUSED, DOES IT?
A. I GUESS YOU'RE RIGHT, YES.

Q. DOCTOR, POSITIVE FOR AMPHETAMINES WASN'T REPORTED EITHER, WAS IT?
A. TO MY KNOWLEDGE, IT WAS, YES.
Q. TO THE POLICE?
A: YES.
Q. POSITIVE HEROIN"
A. YES.
Q. POSITIVE BARBITURATES?
A. TO MY KNOWLEDGE, YES.
Q. POSITIVE MARIJUANA?
A. NO.
Q. WELL, MARIJUANA IS ILLEGAL, ISN'T IT?
A. YES, IT IS.
Q. HAS THE POTENTIAL FOR POOR, FETAL OUTCOME?
A. THAT'S QUESTIONABLE THE RELATIONSHIP BETWEEN MARIJUANA AND POOR FETAL OUTCOME.
Q. WITH A POLICY, DOCTOR, YOU WOULD AGREE WITH ME THAT THIS POLICY WAS PRIMARILY ADDRESSED TO COCAINE?
A. IT WAS THE DRUG THAT WAS POSITIVE MOST FREQUENTLY IN THIS POLICY AND IT WAS THE DRUG THAT PROBABLY LED US TO OUR CONCERN

[NEWMAN 271]

OVER THESE BAD OUTCOMES. BUT ALL OF THE DRUGS ABUSE WERE HANDLED THE SAME WAY.
Q. PRE-POLICY, BEFORE 10/7, IF YOU HAD AN ABRUPTION, IF YOU HAD MANY OF THE SYMPTOMS THAT YOU HAD ON THE CHART HERE, YOU

WERE NOT ABLE TO DETERMINE, IN MOST CASES, WHETHER IT WAS CAUSED BY TOBACCO, ALCOHOL, AN AMPHETAMINE OR COCAINE, WERE YOU?

A. IF WE DID A URINE DRUG SCREEN WE WOULD DETERMINE IF THE PATIENT HAD CONSUMED ANY OF THOSE DRUGS PRIOR TO THE ABRUPTION.

Q. WELL, PRIOR OR WITHIN 48 HOURS?

A. WITHIN 48 HOURS.

Q. SO IF A PATIENT ABUSED ALCOHOL - WELL, ACTUALLY ALCOHOL WOULDN'T EVEN BE FOR 48 HOURS, WOULD IT?

A. I BELIEVE. THAT YOU'RE RIGHT, YES, IT'S GOING TO BE A SHORTER - SHORTER INTERVAL TO DETECT SIGNIFICANT AMOUNTS OF ALCOHOL.

Q. BECAUSE ALCOHOL DISSIPATES .015 PER HOUR?

A. YES, SIR.

Q. SO .15, AFTER TEN HOURS THERE IS NO ALCOHOL LEFT?

A. PROBABLY NOT.

Q. SO, DOCTOR, AND BY THE WAY, THAT'S TWICE OR THAT'S 50 PERCENT MORE THAN THE LEGAL DRUNK, ISN'T IT?

A. I'M SORRY.

Q. .15 IT'S 50 PERCENT MORE THAN BEING LEGALLY DRUNK?

[NEWMAN 272]

A. I BELIEVE THAT YOU'RE RIGHT, YES.

Q. BUT - SO WITHIN THAT TIME PARAMETER, WE DIDN'T KNOW -

MR. HOOD: I DON'T KNOW WHAT HE JUST SAID, BUT I DON'T THINK I AGREE WITH IT AND I DON'T THINK IT'S RELEVANT. HE IS NOW TALKING ABOUT SOME ALCOHOL STATUTE. IT'S BEYOND THE SCOPE.

THE COURT: I DON'T KNOW WHAT RELEVANCE THAT HAS TO THIS CASE.

MR. WHERRY: CLARIFYING THE DOCTOR'S ANSWER.

THE COURT: I THINK PROBABLY THE TIME FRAME MAYBE HAD SOME MARGINAL RELEVANCE, BUT TO GET INTO A DUI STATUTE THAT HAS TO DO WITH THE PRESUMPTION IN A CRIMINAL CASE, I STRUGGLED WITH THAT FOR YEARS AS TO WHETHER OR NOT THAT STATUTE IS EVEN RELEVANT IN A CIVIL CASE. AND SO -

MR. WHERRY: I'LL MOVE ON.

THE COURT: WELL, LADIES AND GENTLEMEN, DISREGARD IT. I DON'T KNOW WHAT EFFECT IT'S GOING TO HAVE, BUT ALL OF I YOU KNOW WHAT THE LEVEL OF ALCOHOL YOU CAN HAVE IN YOUR BLOOD BEFORE YOU CAN BE ARRESTED FOR DUI, AND THAT'S WHAT HE IS REFERRING TO, BUT THAT DOESN'T HAVE ANYTHING TO DO WITH THIS CASE. PLEASE DISREGARD IT.

Q. (BY MR. WHERRY, CONTINUING) IN THE SOUTH CAROLINA

PREVALENT STUDY THAT YOU REFERRED TO, THAT WAS CONSISTENT WITH YOUR FINDINGS?
A. I DIDN'T HAVE ANY QUARREL WITH IT. WE FOUND THAT COCAINE

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[NEWMAN 279]

THOSE NINE, THE DOCTOR YOU SAID THAT ORDERED IT, ORDERED A URINE DRUG SCREEN, IT WAS WITH THE KNOWLEDGE THAT IF POSITIVE, IT WOULD BE USED FOR MEDICAL PURPOSES AND FORENSIC PURPOSES, THE INFORMATION WILL GO TO SOLICITOR'S OFFICE, CHARLESTON POLICE?
A. I DON'T KNOW IF THE WORD FORENSIC IS CORRECT. WE WERE DOING IT FOR SEVERAL REASONS. MEDICAL PATIENT CARE ISSUES. AND IF THE TEST WAS POSITIVE, DEPENDING ON WHAT POINT IN PREGNANCY THE PATIENT WAS AND IF THEY HAD BEEN POSITIVE BEFORE, THAT INFORMATION WOULD HAVE BEEN FORWARDED TO THE SOLICITOR'S OFFICE. AND THE PATIENTS HAD BEEN NOTIFIED OF THAT POSSIBILITY PRIOR.
Q. PRIOR TO THE URINE SCREEN BEING TAKEN, PRIOR TO THE URINE SAMPLE BEING TAKEN?
A. YES, SIR.
Q. WHEN YOU SAY THAT THEY WERE NOTIFIED. OF THAT, DOCTOR, WAS THERE A DOCUMENT, THAT YOU'RE AWARE OF, THAT WAS SIGNED BY

THEM BEFORE THEY. GAVE THE URINE SAMPLE THAT SAID IN IT IF POSITIVE THIS IS GOING TO GO TO THE POLICE?

A. IN THE ANTEPARTUM CLINICS THAT WAS PART OF THE INFORMATION THAT WAS RELATED TO PATIENTS. AND THEY DID SIGN A DOCUMENT IN THE ANTEPARTUM CLINICS INDICATING THAT-THEY DID RECEIVE THE SUBSTANCE ABUSE INFORMATION AND SEEN THE VIDEO.

Q. AND THE SUBSTANCE ABUSE INFORMATION, DID THAT TELL THEM IT WAS GOING TO GO TO THE POLICE?

[NEWMAN 280]

A. THE LETTER FROM THE SOLICITOR'S OFFICE DOES AND I WOULD HAVE TO LOOK AT IT AGAIN. THERE WAS A LETTER THAT WE PROVIDED FROM YOUR DIVISION REGARDING DRUG USE AND PREGNANCY. I WOULD HAVE TO LOOK AT THAT AND SEE IF IT MENTIONS IT AS WELL.

Q. THE SOLICITOR'S LETTER WAS GIVEN ONLY. AFTER A POSITIVE DRUG SCREEN, WASN'T IT?

A. THAT'S TRUE. I'M SORRY.

Q. THE DOCTOR'S LETTER WAS GIVEN ONLY AFTER POSITIVE DRUG SCREEN, BECAUSE IN FACT IT SAYS YOU HAVE BEEN IDENTIFIED AS HAVING -

A. NO, THERE IS ANOTHER LETTER THAT I BELIEVE THAT WAS GIVEN TO EVERY PATIENT COMING FOR ANTEPARTUM CARE.

Q. THEY WERE ALSO GIVEN, WERE THEY NOT, DOCTOR, A BOOKLET THAT TALKED ABOUT THEIR PRIVACY RIGHTS AT THE HOSPITAL?
A. I BELIEVE SO, YES.
Q. DOCTOR, I THINK IN THE LAST PARAGRAPH OR ONE OF THE LETTERS THAT YOU READ, YOU INDICATED THAT IF - I THINK THE QUOTE WAS, IF IT CAN BE SHOWN TO BE EFFECTIVE, REFERRING TO THE POLICY. WAS THAT BECAUSE, DOCTOR, AT THAT TIME AT THE EARLY STAGES OF THIS POLICY, YOU DIDN'T KNOW WHETHER IT WAS GOING TO BE EFFECTIVE, YOU DIDN'T KNOW WHETHER IT WAS GOING TO WORK OR NOT?
A. I THINK THAT THAT WAS IN THE LETTER THAT WE HAD SENT TO THE MICH COUNCIL IN COLUMBIA. AND IN THAT LETTER IN OTHER -
IN OTHER PARTS, I INDICATED THAT THE PRELIMINARY INFORMATION

[NEWMAN 281]

THAT WE HAD COLLECTED AT THE MEDICAL UNIVERSITY SUGGESTED THAT IT WAS AN EFFECTIVE INTERVENTION, THAT IT WAS REDUCING THE FREQUENCY OF POSITIVE TESTS WITHOUT, IN OUR OPINION, DRIVING ANYBODY AWAY FROM CARE AND WITH AN INCREASED FREQUENCY OF TESTING. I REALIZED, HOWEVER, AS I THINK. WE ALL DID, THAT THIS WAS A - AN EARLY INTERVENTION, AND WITH PRELIMINARY

DATA. SO I THINK I WAS JUST MAKING - MAKING THE APPEAL TO THE MICH COUNCIL THAT THIS IS SOMETHING THAT SHOULD BE PURSUED. THAT THERE IS A GREAT DEAL AT STAKE HERE WE THINK PRELIMINARILY THIS IS EFFECTIVE, BUT WE NEED - IT NEEDS TO BE CONTINUED TO BE LOOKED AT.

Q. DOCTOR, YOU SAID THAT THERE WERE OTHER CASE MANAGERS DOING THE SAME THING BESIDES SHIRLEY BROWN; IS THAT RIGHT?

A. YES, SIR.

Q. WHO, MELISIA HENRY WAS ONE?

A. OTHER CASE MANAGERS, THERE WERE CASE MANAGERS ON THE PEDIATRIC SERVICE OR THE NEONATAL SERVICE THAT I DO NOT KNOW THEIR NAMES. AND THEN FREQUENTLY IF THE NURSE MANAGERS WERE UNAVAILABLE THEY WOULD IDENTIFY SOMEONE TO FILL THAT ROLE IN THEIR ABSENCE.

Q. THAT WOULD BE THE POINT PERSON. THE POINT PERSON FOR CONTACT BETWEEN MUSC AND THE POLICE DEPARTMENT, THE SOLICITOR'S OFFICE WAS SHIRLEY BROWN?

A. OR MELISIA HENRY.

Q. OKAY. CAN YOU JUST ESTIMATE OR APPROXIMATE FOR ME WHAT

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[NEWMAN 285]

DAILY QUESTIONS.

Q. WERE YOU AWARE AT THE BEGINNING OF THIS POLICY OF THE

FEDERAL DRUG TREATMENT CONFIDENTIALITY ACT?
A. NO, SIR.
Q. AND WHEN YOU DISCUSSED THE POTENTIAL FOR THESE RIGHTS BEING VIOLATED AND YOU INQUIRED LIKE YOU DID TO MR. GOOD -
MR. HOOD: THE COURT PLEASE, THIS IS BEYOND THE SCOPE.
MR. WHERRY: JUDGE, THIS IS THE LETTER THAT HE READ IN TOTAL.
THE COURT: GO AHEAD.,
Q. (BY MR. WHERRY, CONTINUING) WHEN YOU WERE CONCERNED ABOUT THESE RIGHTS THAT MIGHT BE VIOLATED AND YOU HAD THESE DISCUSSIONS WHERE YOU WERE TOLD IT WAS PERFECTLY LEGAL WITH PEOPLE, I TAKE IT LIKE MR. GOOD, THE GENERAL COUNSEL OF THE HOSPITAL?
A. YES, SIR, ONE OF SEVERAL INDIVIDUALS.
Q. WHAT OTHER LAW TRAINED INDIVIDUALS ARE YOU TALKING ABOUT IT WITH?
A. PEOPLE FROM THE SOLICITOR'S OFFICE AND HEAD OF THE POLICE DEPARTMENT.
Q. DID ANY OF THOSE PEOPLE ADDRESS THE FEDERAL DRUG CONFIDENTIALITY ACT?
A. NOT TO MY MEMORY, NO.
Q. NOW, THE CONCERNS THAT YOU SAID IN THE LETTERS THAT YOU

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[NEWMAN 287]

Q. THERE IS NONE, SIR. THE JUDGE SUSTAINED THE OBJECTION TO MR. HOOD.
A. SORRY.
Q. YOU INDICATED, I THINK, WHERE MR. HOOD HAD THE CHART UP FOR YOU AND YOU WERE EXPLAINING WHAT HAPPENED IN THE POLICY, I THINK YOU INDICATED THAT IF THEY SUCCESSFULLY COMPLETED TREATMENT, THAT THE - THAT THE - THAT THE PROCESS WAS OVER; IS THAT RIGHT?.
A. MY UNDERSTANDING WAS THAT IT'S AN AMNESTY SITUATION WHERE IT WOULD BE NOT PURSUED BY THE SOLICITOR'S OFFICE OR THE POLICE.
Q. AND THEN I THINK YOU SAID IF THEY DIDN'T SUCCESSFULLY TREAT - COMPLETE THE PROGRAM AND CAME BACK TO THE HOSPITAL WITH ANOTHER POSITIVE UDS, THAT THEY WOULD BE PROSECUTED. WERE BOTH COMPONENTS THERE, THEY HAD TO NOT COMPLETE THE PROGRAM AND HAVE A SECOND POSITIVE DRUG SCREEN?
A. TECHNICALLY THE CRITERIA INDICATE THAT IF THEY FAILED TO FOLLOW THROUGH WITH THE DRUG ABUSE TREATMENT THROUGH THE SUBSTANCE ABUSE AGENCY, THEY COULD HAVE BEEN - THE POLICE WOULD HAVE BEEN NOTIFIED BY THE SUBSTANCE ABUSE AGENCIES AND THEY POTENTIALLY COULD HAVE BEEN SUBJECT TO PROSECUTION.
Q. AND WERE; FAIR?

A. I DO NOT KNOW THAT IN PRACTICE. WHAT I BELIEVE WAS HAPPENING WAS THAT IT WOULD BE A COMBINATION OF BOTH FAILING TO COMPLETE SUBSTANCE ABUSE TREATMENT AND THEN RETURN WITH A

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[NEWMAN 289]

LOT OF THINGS?
A. YES, SIR.
Q. THE DECISION TO REFER THE MATTER TO THE POLICE IF ONE REFUSED TREATMENT OR WAS - OR DID NOT SUCCESSFULLY COMPLETE THE TREATMENT, THE INFORMATION CAME FROM DSS, THE DECISION WAS MADE BY SHIRLEY BROWN WHETHER TO REFER, RIGHT?
A. YOU'LL - I'M NOT SURE THAT I'M FOLLOWING YOU WHAT THIS CHAIN IS. IF SOMEONE DID NOT ATTEND THE SUBSTANCE ABUSE TREATMENT.
Q. OR DIDN'T COMPLETE IT DSS WOULD INFORM SHIRLEY BROWN, RIGHT?
A. WELL, I THINK IT WOULD HAVE INITIATED WITH THE SUBSTANCE ABUSE TREATMENT AGENCY.
Q: I'M SORRY. I DIDN'T MEAN DSS. THE SUBSTANCE ABUSE TREATMENT AGENCY WOULD INFORM SHIRLEY BROWN?
A. I'M NOT SURE WHO THEY CALLED, WHETHER IT WENT THROUGH -
Q. IT WASN'T YOU, WAS IT?

A. NO, SIR. I WOULD HAVE ASSUMED THEY PROBABLY WOULD HAVE CONTACTED THE SOLICITOR'S OFFICE DIRECTLY.

Q. WELL, HAVE YOU NOW BECOME AWARE OF THE FEDERAL DRUG CONFIDENTIALITY ACT?

A. NO, I COULDN'T TELL YOU THE DETAILS.

Q. DOCTOR, ONE LAST AREA OF QUESTIONING WHICH YOU MAY HAVE BEGUN TO REALIZE IT'S INCREDIBLE NO STUDY WAS SET UP TO DETERMINE THE SUCCESS OF THE POLICY AT ANY POINT IN TIME, WAS

[NEWMAN 293]

A. I BELIEVE WHEN I TESTIFIED BEFORE I WAS ASKED THAT QUESTION. I REALLY DIDN'T KNOW. I DON'T BELIEVE THEY WERE. I WAS PERSONALLY CALLED AT ONE TIME BY A STAFF MEMBER FROM ANOTHER HOSPITAL TO INQUIRE ABOUT OUR POLICY BECAUSE THEY WERE DISCUSSING IT, BUT I HAD NO PERSONAL KNOWLEDGE AS TO WHAT THE OTHER HOSPITALS WERE DOING.

Q. AND YOU'RE AWARE THAT THE LAWS OF SOUTH CAROLINA APPLY TO ALL OF THE HOSPITALS IN CHARLESTON NOT JUST YOURS; ISN'T THAT CORRECT?

A YES, SIR. YES, MA'AM. I'M SORRY.

Q. YOU SAID IN RESPONSE TO MR. HOOD'S QUESTION THAT IT WAS NEVER YOUR INTENT TO DISCRIMINATE. ISN'T IT CORRECT THAT

BEFORE YOU PUT THIS POLICY INTO PLACE THAT YOU DID NOT HAVE ANY RESEARCH TO SUGGEST THAT A POLICY OF ARRESTING OR THREATENING ARREST OF PREGNANT COCAINE USERS WOULD IMPROVE THE HEALTH OUTCOME OF UNBORN CHILDREN?

A. I WOULD AGREE WITH THAT IN THE SPECIFIC. I DON'T THINK THERE WAS A LOT OF RESEARCH THAT SUGGESTED ANY PARTICULAR EFFECTIVE APPROACH TO THIS. AND MOST PEOPLE WHO WOULD WRITE ON THIS TOPIC WOULD EXPRESS FRUSTRATION IN THE FAILURE TO FIND SUCCESSFUL INTERVENTIONS.

Q. AND DID YOU MAKE - YOU DIDN'T MAKE A WHOLE LITERATURE REVIEW, DID YOU, FOR TREATMENT OF SUBSTANCE-ABUSING WOMEN?

A. NOT A WHOLE LITERATURE REVIEW, BUT WE'RE CERTAINLY FAMILIAR WITH A LOT OF THE LITERATURE IN THE OBSTETRICAL

[NEWMAN 294]

JOURNALS.

Q. IN OBSTETRICAL JOURNALS, BUT NOT IN, FOR EXAMPLE, THE CENTER FOR SUBSTANCE PREVENTION ISN'T THAT CORRECT?

A. NO, MA'AM. BUT I WOULD SUGGEST A NUMBER OF PEOPLE WHO WRITE IN THOSE ARTICLES, AS OPPOSED TO SUBSTANCE ABUSE IN PREGNANCY, WOULD ALSO WRITE IN THE OBSTETRICAL LITERATURE. DR. CHASNOFF BEING ONE EXAMPLE.

Q. AND YOU DIDN'T REVIEW LITERATURE ON THE NATIONAL INSTITUTE ON DRUG ABUSE CONCERNING SUBSTANCE ABUSE?.
A. NO, MA'AM.
Q. AND YOU DIDN'T CONSULT WITH LOIS HAYNES, THE STATE PERSON IN CHARGE OF WOMEN AND DRUG USE?
A. I DID NOT PERSONALLY, NO.
Q. AND WOULDN'T IT BE FAIR TO SAY, DR. NEWMAN, THAT YOU WOULDN'T PRESCRIBE A DRUG TO A PATIENT IF THERE HAD BEEN NO RESEARCH ON ITS EFFECTIVENESS OR ITS INEFFECTIVENESS?
A. I WOULD SAY THAT'S TRUE.
Q. AND ISN'T IT CORRECT THAT YOU WOULDN'T PERFORM A NEW MEDICAL PROCEDURE, UNTESTED PROCEDURE WHERE THERE WAS NO RESEARCH WHAT IT WOULD DO TO THAT PATIENT; ISN'T THAT CORRECT?
A. IN GENERAL I WOULD SAY YES.
MS. PALTROW: I HAVE NO FURTHER QUESTIONS.
(EXCERPT COMPLETE.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF DARLENE NICHOLSON

[NICHOLSON 274]

(TESTIMONY OF DARLENE NICHOLSON,
12-5-96.)
- - -
DARLENE NICHOLSON, PLF. WITNESS, SWORN.
DIRECT EXAMINATION
BY MR. WHERRY:
Q. MS. NICHOLSON, WHERE DO YOU LIVE, PLEASE?
A. I'M SORRY?
Q. WHERE DO YOU LIVE?
A. NORTH CHARLESTON.
Q. AND HOW OLD ARE YOU?
A. THIRTY-SIX.
Q. WHAT IS YOUR DATE OF BIRTH?
A. 9/26/61.
Q. OKAY. NOW I ASK YOU TO SPEAK UP SO THE JURY CAN HEAR YOU.
IN 1994, DID YOU HAVE A BABY?
A. YES, I DID.
Q. WHAT DATE?
A. FEBRUARY 21ST.
Q. OKAY. AND WHERE DID YOU HAVE THAT BABY?
A. MEDICAL UNIVERSITY.
Q. OF SOUTH CAROLINA?
A. SOUTH CAROLINA.

Q. WHERE DID YOU GET YOUR PRENATAL CARE?
A. THE MEDICAL UNIVERSITY OB-GYN CLINIC.

[NICHOLSON 275]

Q. WHY DID YOU GO THERE?
A. IT WAS THE ONLY PLACE THAT I COULD GO BECAUSE OF MY INSURANCE, WHICH WAS MEDICAID.
Q. NOW, PRIOR TO YOUR PREGNANCY WERE YOU REGULARLY USING DRUGS AT SOME POINT IN TIME IN YOUR LIFE?
A. YES, I WAS.
Q. WHAT DRUGS?
A. HEROIN.
Q. OKAY. DID THERE COME A POINT IN TIME IN WHICH YOU SOUGHT HELP FOR YOUR HEROIN PROBLEM?
A. YES, SIR.
Q. AND WHAT WAS THE NATURE OF THE HELP THAT YOU RECEIVED?
A. I GOT ON THE METHADONE CLINIC.
Q. EXPLAIN TO THE JURY WHAT THE METHADONE CLINIC IS?
A. IT'S A MAINTENANCE PROGRAM. IT'S SUPPOSED TO BE TO KEEP HEROIN ADDICTS OFF THE STREET SO THEY CAN MAINTAIN A NORMAL LIFE-STYLE WITHOUT GETTING SICK.
Q. AND IS METHADONE A DRUG?
A. YES, IT IS.
Q. ARE YOU PRESCRIBED THAT DRUG?
A. YES, YOU ARE.
Q. WERE YOU?
A. YES, I WAS.
Q. HOW FREQUENTLY DID YOU TAKE IT?

A. ONCE A DAY EVERY DAY.

[NICHOLSON 276]

Q. AND DID YOU GET A MONTH SUPPLY OR DID YOU HAVE TO GO SOME PLACE DAILY?
A. I HAD TO GO EVERY DAY TO TAKE IT.
Q. PRIOR TO YOUR GETTING PREGNANT, WERE YOU FAITHFULLY TAKING YOUR METHADONE?
A. YES, I WAS.
Q. WHAT DOES METHADONE DO TO YOU? WHAT DID IT - WHAT DID IT DO TO YOU? WHAT EFFECT DID IT HAVE ON YOU?
A. IT KEPT ME FROM BEING SICK.
Q. SICK HOW?
A. PHYSICALLY, FROM THE HEROIN.
Q. WELL DESCRIBE THE HEROIN SICKNESS.
A. IT'S - IT'S A VERY PHYSICAL SICKNESS. YOU - YOU CAN'T FUNCTION WITHOUT IT. IT'S REALLY HARD TO EXPLAIN. YOU JUST CAN'T DO ANYTHING. YOU CAN'T - YOU GET NAUSEATED TO YOUR STOMACH, YOUR BODY HURTS, YOUR BONES HURT. YOU JUST CAN'T DO ANYTHING UNTIL YOU HAVE IT IN YOUR SYSTEM.
Q. AND DOES METHADONE QUELL THAT?
A. YES, IT DOES.
Q. DO YOU REMEMBER APPROXIMATELY THE FIRST TIME OR THE FIRST DATE THAT YOU WENT FOR PRENATAL CARE TO MUSC?
A. NO, SIR, I CAN'T SAY THAT I DO.

Q. AT THAT TIME IN ADDITION TO THE METHADONE, DID YOU TAKE ANY OTHER DRUGS?
A. I WAS USING COCAINE

[NICHOLSON 277]

Q. WHY?
A. THE METHADONE MADE ME VERY TIRED AND SLEEPY. I REALLY DIDN'T KNOW WHAT TO DO BECAUSE IT SEEMED LIKE I COULDN'T FUNCTION WITH IT AND I COULDN'T FUNCTION WITHOUT IT, I HAD NO ENERGY. SO I WOULD KIND OF USE THE COCAINE TO BALANCE MYSELF OUT TO BALANCE MY SYSTEM SO I THOUGHT SO THAT I WOULD HAVE THE ENERGY TO DO WHAT I NEEDED TO DO DURING THE COURSE OF THE DAY.
Q. DID THERE COME A POINT IN TIME IN THE COURSE OF YOUR PRENATAL TREATMENT WHEN YOU MET NURSE BROWN?
A. YES, SIR.
Q. DESCRIBE FOR THE JURY WHAT THAT WAS LIKE AND WHAT HAPPENED, PLEASE.
A. I BELIEVE IF I'M NOT MISTAKEN I WAS IN MY SEVENTH MONTH OF PREGNANCY. I WAS GOING PRETTY REGULARLY TO MY PRENATAL VISITS. I WENT IN FOR A REGULAR DOCTOR VISIT. AND THEY EXAMINED ME AND TOLD ME THAT I WAS DEHYDRATED. THE NURSE DID. I CAN'T RECALL HER NAME. THAT I NEEDED TO GO TO THE

MAIN HOSPITAL TO GET HOOKED UP TO GLUCOSE.

MR. HOOD: IF THE COURT PLEASE, I MOVE TO STRIKE THE ANSWER AS NOT BEING RESPONSIVE TO THE QUESTION. OBVIOUSLY SHE DOESN'T KNOW THE ANSWER TO THE QUESTION.

THE COURT: WHAT WAS THE QUESTION?

MR. WHERRY: I ASKED HER TO DESCRIBE HER ENCOUNTER WITH NURSE BROWN, WHICH I BELIEVE SHE IS LEADING UP TO EXPLAINING HOW SHE GOT TO HER, BUT THE OBJECTION NONRESPONSIVE

[NICHOLSON 278]

I THINK IS ONLY AVAILABLE TO THE PERSON THAT ASKED THE QUESTION.

MR. HOOD: SHE IS GOING INTO HEARSAY NOW.

THE COURT: NO, I DON'T THINK SO. DOES THIS EXPLANATION INVOLVE NURSE BROWN?

THE WITNESS: IT'S HOW I COME TO MEET HER, YES, SIR.

Q. (BY MR. WHERRY, CONTINUING) GO AHEAD.

A. LIKE I WAS SAYING, I WAS TOLD TO GO TO THE MAIN HOSPITAL, THEY SAID I WAS DEHYDRATED AND I NEEDED TO BE HOOKED UP TO GLUCOSE.

WELL, I WENT OVER TO THE MAIN HOSPITAL AND THEY PUT

ME IN A ROOM. AND I SAT THERE FOR A FEW-MINUTES BEFORE ANYBODY CAME IN. AND WHEN THEY CAME IN THEY TOLD ME TO DRINK LOTS OF WATER. THEY KEPT HAVING ME DRINK WATER. I ASKED THEM IF I WAS TO BE HOOKED UP TO THE GLUCOSE MACHINE. I DIDN'T GET NO ANSWER, THEY JUST TOLD ME TO KEEP DRINKING WATER. WELL THEY CAME BACK IN, I DON'T REMEMBER THE TIME FRAME BUT - AND TOLD ME TO USE THE BATHROOM IN A CUP. AND I ASKED WHAT FOR. AND THEY SAID TO SEE IF I HAD ENOUGH FLUID IN MY SYSTEM SO THEY COULD SEND ME HOME. SO I DID THIS. I USED THE RESTROOM IN THE CUP.

I GUESS ABOUT 15 MINUTES LATER IS WHEN MS. BROWN CAME IN AND THAT'S THE FIRST TIME I HAD EVER MET HER. AND SHE TOLD ME THAT I HAD TESTED POSITIVE FOR COCAINE. AND ASKED ME IF I REALIZED THAT I HAD A PROBLEM. AND I SAID YES I KNEW I

[NICHOLSON 279]

HAD A PROBLEM. SHE SAID THAT I - ASKED ME IF I WOULD BE WILLING TO GO INTO TREATMENT. AND I TOLD HER THAT I WOULD GO INTO TREATMENT. I - SHE WENT OUT THE ROOM AND SAID THAT SHE HAD TO MAKE SOME PHONES CALLS. AND SHE CAME BACK IN, I WASN'T WILLING TO GO RIGHT AT THAT TIME.

Q. WHY?
A. I HAD A SEVEN YEAR OLD AT HOME THAT WAS SUPPOSED TO BE GETTING HOME FROM SCHOOL, THERE WAS NO ONE THERE TO TAKE CARE OF HIM. SHE SAID THAT I COULD EITHER GO THEN OR I WOULD BE ARRESTED.
Q. LET ME STOP YOU THERE. WHO IS SHE?
A. SHIRLEY BROWN.
Q. WHEN WAS THEN, GO THEN?
A. RIGHT THAT MINUTE. I - LET'S SEE, MY LITTLE BOY USUALLY GOT HOME AROUND 2:30 I BELIEVE, SO THIS MUST HAVE BEEN LIKE 2, QUARTER AFTER MAYBE.
Q. OKAY. WHAT DID YOU SAY WHEN SHE TOLD YOU THAT YOU HAD TO GO RIGHT THEN RIGHT THAT MINUTE?
A. I EXPLAINED TO HER ABOUT MY SON COMING HOME FROM SCHOOL AND THAT I WOULD NEED TO MAKE PREPARATIONS.
Q. DID SHE TELL YOU WHERE YOU WERE GOING FOR TREATMENT?
A. MEDICAL UNIVERSITY.
Q. INPATIENT OR OUTPATIENT?
A. INPATIENT.
Q. DID SHE TELL YOU WHAT DEPARTMENT?

[NICHOLSON 280]

A. NO. I DON'T BELIEVE SO.
Q. OKAY. WHAT DID SHE SAY WHEN YOU TOLD HER THAT YOU HAD TO GO HOME AND TAKE CARE OF YOUR BABY, YOUR CHILD?

A. THAT IF I DIDN'T GO INTO TREATMENT THEN THAT I WOULD BE ARRESTED. I OFFERED --
Q. AGAIN, WHAT DATE WAS THIS? WHAT MONTH?
A. IT WAS DECEMBER.
Q. OF WHAT YEAR?
A. '94.
Q. DO YOU REMEMBER ABOUT WHEN IN THAT MONTH?
A. I'M SORRY. IT WAS '93, BECAUSE HE WAS BORN FEBRUARY.
Q. YES. OKAY.
A. I'M SORRY.
Q. DO YOU REMEMBER WHEN IN THAT MONTH, BEGINNING, MIDDLE, END?
A. MAYBE THE 17TH I THINK.
Q. OKAY. WHEN SHE TOLD YOU THAT YOU DID NOT GO INTO THE INPATIENT TREATMENT RIGHT THEN OR YOU WOULD BE ARRESTED, WHAT DID YOU SAY?
A. I ASKED IF I COULD BE ESCORTED HOME JUST LONG ENOUGH TO TALK TO MY SON. BECAUSE I'M VERY CLOSE TO MY SON, HE HAS NEVER REALLY BEEN AWAY FROM ME BEFORE OTHER THAN TO GO TO HIS GRANDPARENTS' ON THE WEEKEND OR SOMETHING, BUT HE ALWAYS KNEW WHERE HIS MOMMY WAS.
Q. WHAT DID NURSE BROWN SAY?

[NICHOLSON 281]

A. I WAS NOT ALLOWED TO GO.
Q. WHAT HAPPENED TO YOU?

A. I WAS ESCORTED OVER TO MEDICAL UNIVERSITY, AND I WAS SCARED. I WAS TERRIFIED. I TRIED TO LEAVE. I JUST WANTED TO BE ABLE TO EXPLAIN TO HIM, YOU KNOW, THAT MOMMY WAS GOING IN THE HOSPITAL. AND JUST TO MAKE ARRANGEMENTS TO MAKE SURE THAT HE WOULD BE OKAY WHILE I WAS IN THE HOSPITAL.

Q. WERE YOU ABLE TO?

A. NO, I WAS NOT. AND WHEN I TRIED TO LEAVE, THEY SHUT THE DOOR SO I WAS NOT ALLOWED TO LEAVE.

Q. DO YOU KNOW WHAT HAPPENED TO YOUR SON THAT AFTERNOON?

A. MY BOYFRIEND WAS ABLE TO GET IN TOUCH WITH HIS MOTHER AND SHE PICKED HIM UP. AND THEY DIDN'T EXPLAIN TO HIM WHAT WAS GOING ON BECAUSE THEY WEREN'T QUITE SURE.

Q. WAS HE WITH YOU AT THE HOSPITAL?

A. NO, HE WAS NOT. HE WAS AT SCHOOL. MY BOYFRIEND WAS, YES.

Q. ALL RIGHT. HOW LONG DID YOU STAY IN THE HOSPITAL?

A. THIRTY DAYS.

Q. AT THE RISK OF ASKING A LEADING QUESTION, I TAKE IT THEN YOU WERE RELEASED SOMETIME IN THE MIDDLE OF JANUARY?

A. RIGHT.

Q. WHEN YOU WERE RELEASED IN THE MIDDLE OF JANUARY I'M SORRY, BETWEEN THE MIDDLE OF DECEMBER AND THE MIDDLE OF

JANUARY, DID YOU RECEIVE ANY PRENATAL CARE WHILE YOU WERE AN

[NICHOLSON 282]

INPATIENT?
A. YES.
Q. WOULD YOU DESCRIBE GENERALLY THAT PRENATAL CARE.
A. I WAS TAKEN OUT TO MY PRENATAL VISITS TO THE OB-GYN CLINIC DURING MY INPATIENT TREATMENT.
Q. HOW WERE YOU DISCHARGED 30 DAYS LATER, WHAT HAPPENED THAT CAUSED YOU TO BE ABLE TO GET OUT?
A. THAT'S AS LONG AS THE INSURANCE WOULD COVER - WAS 30 DAYS.
Q. WERE YOU FREE TO LEAVE DURING THAT 30-DAY PERIOD?
A. NO, I WAS NOT.
Q. AND WHEN THE INSURANCE EXPIRED AFTER 30 DAYS, YOU WERE THEN FREE TO LEAVE?
A. RIGHT.
Q. WHERE DID YOU GO AFTER YOUR INSURANCE EXPIRED AND THEY LET YOU GO?
A. I BELIEVE I WENT BACK TO MY IN-LAWS. OR TO MY IN-LAWS.
Q. I'M JUST THINKING, BUT JUST BEAR WITH ME FOR MOMENT. I'M TRYING TO PHRASE A QUESTION IN MY MIND. DO YOU KNOW WHAT WOULD HAVE HAPPENED TO YOU IF YOU HADN'T HAD INSURANCE COVERAGE?
MR. HOOD: IF THE COURT PLEASE, THAT'S ABSOLUTE SPECULATION.

THE COURT: I SUSTAIN THE OBJECTION.
Q. (BY MS. WHERRY, CONTINUING) AFTER YOU WE DISCHARGED YOU SAID THAT YOU WENT TO YOUR IN-LAWS?

[NICHOLSON 283]

A. RIGHT.
Q. WHEN WAS YOUR NEXT ASSOCIATION WITH MUSC OR SHIRLEY BROWN?
A. WITH SHIRLEY BROWN OR WITH MUSC?
Q. EITHER ONE.
A. WELL, I CONTINUED TO GO TO MY PRENATAL VISITS. THERE WAS A TIME THAT I DID NOT GO LIKE I WAS SUPPOSED TO GO TO MY PRENATAL VISITS BECAUSE I GOT SCARED.
Q. WHY WERE YOU SCARED?
A. BECAUSE I HAD - WAS USING. THEY HAD - BECAUSE MY PREGNANCY, THE METHADONE, THEY HAD LOWERED MY DOSAGE ON THE METHADONE AND I WAS GETTING SICK, SO I STARTED USING ANOTHER OPIATE TO MAKE UP FOR THAT, SO.
Q. WHAT OTHER OPIATE?
A. PERCODAN.
Q. WHAT OTHER OPIATE?
A. PERCODAN.
Q. THAT'S A PRESCRIPTION MEDICATION?
A. RIGHT.
Q. AND WHAT WERE YOU SCARED ABOUT?
A. BECAUSE OF WHAT HAPPENED BEFORE I - IT JUST TERRIFIED

ME. I DIDN'T KNOW WHAT WOULD HAPPEN NEXT, I DIDN'T WANT TO BE LOCKED UP.

Q. SO YOU DIDN'T GO FOR PRENATAL CARE?

A. DURING A PERIOD OF TIME, RIGHT.

[NICHOLSON 284]

Q. WHEN WAS THE NEXT TIME YOU WENT FOR PRENATAL CARE OR NEXT THING THAT HAPPENED?

A. THE METHADONE CLINIC FOUND OUT I WAS NOT GOING FOR MY PRENATAL CARE, SO I WAS NOT ALLOWED TO PICK UP MY METHADONE UNTIL AFTER I RECEIVED MY PRENATAL CARE. SO I HAD TO START GOING BACK IN ORDER TO GET MY METHADONE.

Q. AND WHAT HAPPENED WHEN YOU WENT BACK?

A. I WAS - I DON'T REALLY RECALL. I WAS TOLD BY MY DOCTOR OR MIDWIFE AT THE TIME THAT I NEEDED TO STAY CLEAN BECAUSE SHIRLEY BROWN WAS ON HER BACK ABOUT ME AND -

MR. HOOD: COURT PLEASE, I MOVE TO STRIKE THAT AS NONRESPONSIVE.

THE COURT: I THINK IT WAS.

MR. WHERRY: THANK YOU.

Q. CONTINUE.

THE COURT: LADIES AND GENTLEMEN, STRIKE THE ANSWER IN ITS ENTIRETY. I DON'T THINK IT WAS RESPONSIVE. AND EVEN

IF IT WERE, I'M NOT SURE THAT IT'S ADMISSIBLE. SO LET'S - YOU WANT TO EXPLORE IT AT THE SIDEBAR, I'LL BE GLAD TO DO IT, BUT.

MR. WHERRY: YES, SIR, MAY I.

THE COURT: IT SEEMS TO ME THAT IT CAN'T - I JUST DON'T KNOW HOW IT COULD HAVE ANY PROBATIVE VALUE EXCEPT FOR IT'S TRUTH, AND IT SEEMS TO ME THAT IT'S HEARSAY.

Q. (BY MR. WHERRY, CONTINUING) AS THE RESULT OF WHAT THIS

[NICHOLSON 285]

MIDWIFE TOLD YOU, WHAT DID YOU DO?

A. I PUT MYSELF BACK INTO TREATMENT. I WENT BACK INTO -

Q. WHERE?

A. MEDICAL UNIVERSITY.

Q. THE SAME PLACE YOU HAD JUST GOTTEN OUT OF?

A. RIGHT.

Q. AND DID YOU HAVE ANY CONTACT WITH SHIRLEY BROWN THERE?

MR. HOOD: IF THE COURT PLEASE, I'M GOING TO OBJECT TO LEADING.

Q. (BY MR. WHERRY, CONTINUING) AFTER YOU PUT YOURSELF BACK IN, WHAT HAPPENED NEXT?

A. I STAYED IN UNTIL AFTER I HAD MY BABY.

Q. WHEN DID YOU HAVE YOUR BABY?

A. FEBRUARY 21ST.

Q. DESCRIBE HAVING THE BABY.

A. I WAS IN - I WAS IN TREATMENT WHEN I WENT INTO LABOR. THEY TOOK ME OVER TO THE EMERGENCY ROOM AND - OVER TO THE MAIN HOSPITAL AND I HAD MY BABY.
Q. DID YOU HAVE CONTACT WITH ANY HUMAN BEINGS DURING THAT PROCESS?
A. THE LADY THAT TOOK ME OVER THERE TO HAVE THE BABY, THE NURSE MIDWIFE WHO HAD SEEN ME THROUGH MY PRENATAL CARE VISITS, AND A FRIEND OF MINE THAT WAS IN TREATMENT WITH ME HAD CALLED MY BOYFRIEND TO LET HIM KNOW THAT I HAD WENT INTO LABOR AND HE WAS THERE.

[NICHOLSON 286]

Q. AFTER YOU HAD YOUR BABY, WHAT HAPPENED?
A. THE NEXT MORNING IT WAS THE NEXT TIME THAT I SAW SHIRLEY BROWN.
Q. WHAT HAPPENED WHEN YOU SAW HER?
A. SHE -
Q. THIS IS THE MORNING AFTER YOU HAD YOUR BABY?
A. IF I'M NOT MISTAKEN. YES, SIR, IT MUST HAVE BEEN.
Q. WHAT HAPPENED?
A. SHE CAME INTO THE ROOM AND SHE APPARENTLY HAD CALLED DSS. AND THEY TOLD ME THAT I COULD NOT TAKE MY BABY HOME WITH ME.
Q. WHO TOLD YOU THAT?

A. SHIRLEY BROWN TOLD ME THAT. AND DSS ALSO PHONE CALLED ME THAT SAME DAY AND TOLD ME THAT I COULD NOT TAKE MY BABY HOME.
Q. WHAT WAS THE NEXT THING THAT HAPPENED?
A. I - I WENT BACK INTO TREATMENT AFTER THAT AND THE BABY STAYED IN THE HOSPITAL.
Q. HOW LONG WERE YOU IN TREATMENT?
A. MAYBE A WEEK AFTERWARDS TO COMPLETE MY 30 DAYS.
Q. AND THEN WHAT HAPPENED?
A. I WAS ALLOWED - BECAUSE I WAS CLEAN DURING THAT TIME I WAS ALLOWED TO TAKE THE BABY HOME WITH ME. I HAD SPOKEN TO MY LAWYER AND, YOU KNOW.
Q. AT MUSC, DID YOU HAVE ANY OTHER MEDICAL TREATMENT AT ABOUT THAT SAME PERIOD OF TIME?

[NICHOLSON 287]

A. UMM, I - I DON'T UNDERSTAND WHAT YOU -
Q. OKAY. DID YOU HAVE ANY CONVERSATION WITH SHIRLEY BROWN OR ANYONE AT MUSC CONCERNING YOUR ABILITY TO CONCEIVE MORE CHILDREN?
A. I HAD - I HAD A NORPLANT PUT IN.
Q. WHAT IS A NORPLANT?
A. IT'S - IT'S A BIRTH CONTROL DEVICE PUT IN YOUR ARM.
Q. WHAT - WHERE DID YOU LEARN ABOUT THE NORPLANT?
A. MUSC.

Q. WHO TOLD YOU?
A. THIS ALL HAPPENED SO QUICKLY. IT WAS THE VERY NEXT MORNING AFTER I HAD THE BABY WAS THE FIRST TIME I HEARD ABOUT IT.
Q. YES, MA'AM.
A. I'M GOING TO GO BACK A MINUTE. PREVIOUSLY I HAD SIGNED PAPERS SAYING THAT I WOULD HAVE MY TUBES TIED.
Q. WHY DID YOU SIGN THOSE PAPERS?
A. BECAUSE THEY WANTED ME TO.
Q. WHO IS THEY?
A. THE MEDICAL UNIVERSITY.
Q. WHO IS THEY?
A. I DON'T RECALL. I GUESS IT WAS THE NURSE MIDWIFE I HAD TALKED TO.
MR. HOOD: I MOVE TO STRIKE THE ANSWER.
THE COURT: YOU SAID THAT YOU GUESS. LADIES AND

* * *

[NICHOLSON 297]

MR. WHERRY: THANK YOU, SIR.
Q. (BY MR. WHERRY, CONTINUING) I LOST MY TRAIN OF THOUGHT. YOU SAW THE FILM, YOU TOLD THE NORPLANT PEOPLE THAT YOU DIDN'T WANT TO HAVE THE NORPLANT?
MR. HOOD: OBJECTION, LEADING.
THE COURT: I THINK THAT SHE WAS AT THAT POINT, WE CAN READ THE RECORD BACK, BUT I THINK SHE WAS AT THAT POINT

WHERE YOU HAD ASKED HER AS A RESULT OF WHAT YOU SAW ON THE FILM, WHAT DID YOU TELL THESE PEOPLE AND THEN I THINK YOU ASKED WHAT - YOU WERE AT THAT POINT OF SAYING WHAT DID THEY RESPOND.

MR. WHERRY: YES. THAT WAS MY PRELIMINARY QUESTION TO LEAD TO THAT.

Q. (BY MR. WHERRY, CONTINUING) AFTER YOU TOLD THEM YOU DIDN'T WANT THE NORPLANT, WHAT DID THEY SAY TO YOU?

A. THEY TOLD ME THAT BEFORE I COULD LEAVE THE HOSPITAL I NEEDED TO HAVE IT DONE. THAT'S WHAT WAS TOLD TO ME.

Q. HAVING BEEN TOLD THAT, WHAT DID YOU DO?

A. I HAD IT DONE.

Q. THAT WAS IN WHAT YEAR?

A. '94.

Q. DO YOU STILL HAVE THE NORPLANT?

A. NO, I DON'T.

Q. WHY?

A. MY HEPATITIS HAS GOTTEN BAD OVER THE PAST FEW YEARS, MY

[NICHOLSON 298]

ENZYMES WENT UP REAL HIGH AND MY DOCTOR REQUESTED THAT IT BE TAKEN OUT.

Q. WHEN WAS IT TAKEN OUT?

A. THIS YEAR.

MR. HOOD: YOUR HONOR, PLEASE, THIS IS HEARSAY.

MR. WHERRY: WHEN IT WAS TAKEN OUT IS NOT HEARSAY.
THE COURT: SAY WHAT?
MR. WHERRY: MY QUESTION WAS WHEN WAS IT TAKEN OUT. THAT'S NOT HEARSAY.
THE COURT: NO, I DON'T THINK IT IS, BUT - OKAY.
MR. HOOD: HER RESPONSE TO THE QUESTION WAS -
THE COURT: HER RESPONSE WAS THAT HER DOCTOR SAID TO TAKE IT OUT. AND I DON'T THINK THAT THAT HAS ANY ASSERTION IN IT TO BE HEARSAY. SO I OVERRULE THE OBJECTION.
Q. (BY MR. WHERRY, CONTINUING) THANK YOU. WHEN WAS IT TAKEN OUT?
A. THIS YEAR I BELIEVE JANUARY. I'M NOT POSITIVE.
Q. NOW, JUST ONE LAST AREA OF QUESTIONING, MS. NICHOLSON. ALL THAT YOU HAVE TOLD US HERE ON THE WITNESS STAND, WHAT EFFECT HAS THAT HAD ON YOUR LIFE AS YOU WERE GOING THROUGH IT AND WHAT EFFECT DOES IT HAVE ON YOUR LIFE NOW AS YOU GO FORWARD?
A. I HAVE ANXIETY AND PANIC ATTACKS AND IT'S - THEY HAVE GOTTEN WORSE. BECAUSE OF MY LIVER I'M SUPPOSED TO GO TO DOCTOR ON A REGULAR BASIS, AND I STILL - I STILL DON'T GO

LIKE I SHOULD.
Q. WHY?
A. I GET - I GET SICK TO MY STOMACH. I THROW UP. I GET TO WHERE I CAN'T BREATHE. I TRY TO MAKE IT. I CAN'T GO BY MYSELF, I HAVE TO HAVE SOMEONE GO WITH ME. I TRY TO GO AS OFTEN AS I'M SUPPOSED TO BECAUSE I NEED TO BE THERE. THE LAST TIME I WENT I HAD TO WALK OUT. MY BOYFRIEND WAS WITH ME. I WAS SITTING IN THE WAITING ROOM AND I JUST GOT SO NERVOUS AND UPSET AND I COULDN'T BREATHE. I LEFT. I MEAN, I HAVE - I HAVE NIGHTMARES. I JUST - AND MY LITTLE BOY, ANYTIME I GO ANYWHERE HE IS SCARED TO DEATH THAT I'M NOT GOING TO COME BACK HOME.
Q. HOW DOES THAT MAKE YOU FEEL?
MR. HOOD: OBJECT TO LEADING.
A. TERRIBLE.
Q. HOW DOES THAT MAKE YOU FEEL?
MR. WHERRY: IT'S NOT LEADING.
THE COURT: GO AHEAD.
A. IT SCARES ME BECAUSE I CAN'T CONTROL IT. I CAN'T CONTROL WHEN THIS THING - WHEN I GET LIKE THAT, I DON'T WANT TO BE THAT WAY. I'M TERRIFIED OF HOSPITALS. I MEAN, I DON'T WANT TO BE THIS WAY.
Q. DID YOU HAVE THOSE FEELINGS BEFORE WHAT YOU EXPERIENCED

WHATYOU REPORTED TO US IN YOUR TESTIMONY?
A. NO. NO, I DID NOT. I NEVER PARTICULARLY LIKED GOING TO

* * *

[NICHOLSON 303]

MINE, BUT I WAS WRONG.
(SIDEBAR TERMINATED.)
THE COURT: WE'RE GOING TO TAKE A BREAK AT FOUR.
LET'S JUST TAKE IT NOW AND IT MIGHT MAKE IT EASIER. TAKE
ABOUT 15 OR 20 MINUTES.
(WHEREUPON, A BREAK WAS TAKEN OFF THE RECORD.)
THE COURT: I BELIEVE WE'RE READY FOR
CROSS-EXAMINATION.
MS. CRAIG: YOUR HONOR, I WOULD LIKE TO PUT
PLAINTIFF NICHOLSON'S MEDICAL RECORDS IN EVIDENCE PLEASE. THE
SUBSTANCE ABUSE RECORDS SUBJECT TO YOUR RULING.
THE COURT: MEDICAL RECORDS AND SUBSTANCE ABUSE
RECORDS OFFERED AND RECEIVED UNDER THE CONDITIONS WE HAVE ALL
OF OTHERS.
MR. WHERRY: YES, SIR.
DEPUTY CLERK: 67 AND 71.
MS. CRAIG: GOOD AFTERNOON, MS. NICHOLSON.
CROSS-EXAMINATION
BY MS. CRAIG:
Q. HOW LONG HAVE YOU BEEN USING DRUGS, MS. NICHOLSON?

A. I GUESS SINCE I WAS ABOUT 13.
Q. HOW OLD? I'M SORRY.
A. THIRTEEN.
Q. THIRTEEN. AND IN OCTOBER OF 1989 YOU ACKNOWLEDGED THAT YOU WERE ADDICTED TO HEROIN AND VOLUNTARILY WENT TO SUBSTANCE

[NICHOLSON 304]

ABUSE TREATMENT AT CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION; IS THAT CORRECT?
A. CORRECT.
Q. OKAY. THE MEDICAL UNIVERSITY HAD NOTHING TO DO WITH YOUR. VOLUNTARY ADMISSION TO CHARLESTON COUNTY SUBSTANCE ABUSE; IS THAT CORRECT?
A. RIGHT.
Q. AND AS PART OF YOUR SUBSTANCE ABUSE TREATMENT AT CHARLESTON COUNTY SUBSTANCE ABUSE, YOU RECEIVED METHADONE DAILY; IS THAT CORRECT?
A. CORRECT.
Q. NOW I'M GOING TO JUMP FROM 1989 TO YOUR PREGNANCY WITH JUSTIN. YOU WERE PREGNANT IN 1983 AND THEN DELIVERED IN 1994? RIGHT?
A. RIGHT.
Q. OKAY. AND FROM 1989 THROUGH 1994 YOU CONTINUED TO TAKE METHADONE?
A. RIGHT.
Q. NOW YOU ADMITTED USING COCAINE WHILE PREGNANT WITH JUSTIN; IS THAT CORRECT?

A. CORRECT.
Q. AND YOU ALSO ADMITTED TO USING HEROIN WHILE PREGNANT WITH JUSTIN?
A. NO. PERCODAN.
Q. YOU DID NOT USE HEROIN WHEN YOU WERE PREGNANT WITH

[NICHOLSON 305]

JUSTIN?
A. NO.
Q. JUST A MINUTE, PLEASE.
MR. WHERRY: MAY I HAVE THE PAGE AND LINE NUMBER, PLEASE.
MS. CRAIG: YOU SURE MAY.
Q. (BY MS. CRAIG, CONTINUING) MS. NICHOLSON, THIS IS YOUR DEPOSITION DATED SEPTEMBER 26, 1994. OKAY? IF YOU WOULD PLEASE TURN TO PAGE 80 OF YOUR DEPOSITION. AND IF YOU WOULD PLEASE LOOK AT LINE 13, I'M GOING TO READ THE QUESTION. AND WHEN I SAY SO, WOULD YOU PLEASE ANSWER WITH YOUR RESPONSE.
LINE 13.
"YOU WERE ON THE METHADONE AND YOU WERE USING COCAINE. WERE YOU USING ANY OTHER DRUGS WHILE YOU WERE PREGNANT WITH JUSTIN?"
AND YOUR ANSWER AT LINE 16 WAS, PLEASE READ IT.
A. "I USED HEROIN DURING - HEROIN."
Q. THANK YOU.
NOW, MS. NICHOLSON YOU TESTIFIED EARLIER THAT YOU

WENT TO YOUR PRENATAL VISITS REGULARLY, IS THAT CORRECT, WHEN YOU WERE PREGNANT WITH JUSTIN?
A. YES.
Q. NOW IN ORDER TO GET YOUR METHADONE DAILY FROM CHARLESTON COUNTY SUBSTANCE ABUSE YOU WERE REQUIRED TO GO TO THOSE PRENATAL VISITS; IS THAT CORRECT?

[NICHOLSON 306]

A. DURING THE LATTER PART OF MY PREGNANCY.
Q. OKAY. ON OCTOBER 20, 1993, YOU WENT IN FOR A VISIT TO THE MUSC CLINIC AND YOU TESTED POSITIVE FOR COCAINE; IS THAT CORRECT?
A. CORRECT.
Q. AND ON THAT DATE YOU ALSO SIGNED A CONSENT FORM. WOULD YOU PLEASE VERIFY YOUR SIGNATURE? IS THAT YOUR SIGNATURE?
A. YES, IT IS.
MS. CRAIG: I WOULD LIKE TO PUT DEFENDANTS' 67 A INTO EVIDENCE.
THE COURT: HAVE YOU SEEN IT?
MR. WHERRY: YES.
THE COURT: ANY OBJECTION?
MR. WHERRY: NO.
(BY MS. CRAIG, CONTINUING) NOW, MS. NICHOLSON, YOU WERE NEXT ADMITTED TO THE MEDICAL UNIVERSITY ON DECEMBER 17, 1993. DO YOU REMEMBER THAT?
A. RIGHT.

Q. OKAY. AND AT THAT TIME YOU SIGNED A GENERAL CONSENT FORM FOR ADMISSION?
A. FOR INPATIENT?
Q. YES. IS THAT YOUR SIGNATURE?
A. YES, IT IS.
MS. CRAIG: I WOULD LIKE TO PUT 67 B INTO EVIDENCE, PLEASE.

[NICHOLSON 307]

Q. (BY MS. CRAIG, CONTINUING) NOW AT THAT TIME –
THE COURT: WITHOUT OBJECTION.
MS. CRAIG: EXCUSE ME?
THE COURT: WITHOUT OBJECTION.
MS. CRAIG: THANK YOU.
Q. (BY MS. CRAIG, CONTINUING) NOW AT THAT TIME WHEN YOU WENT TO THE MEDICAL UNIVERSITY DECEMBER 17, 1993, MS. BROWN EXPLAINED THE RISKS OF USING COCAINE WHILE YOU WERE PREGNANT? DO YOU REMEMBER THAT?
A. NO, I DO NOT.
Q. YOU DON'T REMEMBER MS. BROWN TELLING YOU THE RISKS OF USING COCAINE WHILE YOU WERE PREGNANT, THE HARM TO YOURSELF AND TO YOUR UNBORN CHILD?
A. NO, I DON'T REMEMBER HAVING THAT CONVERSATION.
Q. OKAY. IF THAT INFORMATION IS CONTAINED IN YOUR MEDICAL REPORTS, WOULD YOU DISPUTE THAT THAT HAPPENED AND THAT

CONVERSATION OCCURRED IF IT IS WRITTEN IN YOUR MEDICAL UNIVERSITY RECORD?

A. THE CONVERSATION I REMEMBER WAS THE FACT THAT SHE TOLD ME I TESTED COCAINE POSITIVE AND ASKED ME IF I WOULD BE WILLING TO GO INTO TREATMENT. THAT'S -

Q. OKAY. AT THAT SAME TIME ARRANGEMENTS WERE MADE FOR YOU TO GO TO INPATIENT SUBSTANCE ABUSE TREATMENT; IS THAT CORRECT?

A. RIGHT.

Q. NOW, MS. NICHOLSON, YOU CONTINUED TO USE DRUGS; IS THAT

[NICHOLSON 308]

CORRECT?

A. YES. PERCODAN.

Q. AND THEN IN FEBRUARY - FEBRUARY 9, 1994, YOU WENT TO THE MEDICAL UNIVERSITY CLINIC AND YOU SIGNED ANOTHER CONSENT FORM FOR TREATMENT. WOULD YOU PLEASE VERIFY YOUR SIGNATURE. IT'S RIGHT HERE?

A. (WITNESS NODS HEAD.)

MS. CRAIG: I WOULD LIKE TO OFFER DEFENDANTS' EXHIBIT 67 C INTO EVIDENCE PLEASE.

MR. WHERRY: NO OBJECTION.

Q. (BY MS. CRAIG, CONTINUING) NOW THE NEXT TIME YOU WENT TO THE MEDICAL UNIVERSITY WAS ON FEBRUARY 17, 1994, AND THIS WAS FOR A CLINIC VISIT. AT THIS TIME SHIRLEY BROWN EXPLAINED THE

HARMFUL EFFECTS OF COCAINE AND HEROIN TO YOURSELF AND TO YOUR UNBORN CHILD; IS THAT CORRECT?

MR. WHERRY: I OBJECT. SHE COULDN'T EXPLAIN IT TO HER UNBORN CHILD, AND THAT QUESTION JUST MADE NO SENSE.

MS. CRAIG: I'LL BE MORE THAN HAPPY TO REPHRASE IT.

THE COURT: GO AHEAD.

Q. (BY MS. CRAIG, CONTINUING) AT THAT TIME DID MS. BROWN EXPLAIN TO YOU THE EFFECTS OF USING COCAINE WHILE YOU WERE PREGNANT, THE EFFECT TO YOU AND TO YOUR UNBORN CHILD?

A. AT WHAT TIME WAS THIS?

Q. THIS WAS FEBRUARY 17, 1994.

NO.

[NICHOLSON 309]

Q. IF YOUR MEDICAL RECORDS INDICATE THAT MS. BROWN HAD THIS CONVERSATION WITH YOU, DO YOU DISPUTE THAT?

A. YES. YES, I DO.

Q. AT THE SAME TIME YOU SAW A VIDEO THAT SHOWED THE DANGERS OF USING COCAINE AND OTHER DRUGS DURING PREGNANCY?

A. NO, I DID NOT.

Q. YOU DID NOT SEE THAT. WOULD YOU PLEASE OPEN UP YOUR DEPOSITION. ACTUALLY IT WOULD BE VOLUME 2. THIS IS THE CONTINUATION OF YOUR DEPOSITION DATED FEBRUARY 15, 1995. MS.

NICHOLSON, IF YOU WOULD PLEASE TURN TO PAGE 44 OF YOUR DEPOSITION.

MR. WHERRY: MAY I HAVE A MOMENT, PLEASE.

(PAUSE.)

MR. WHERRY: I'M READY.

Q. (BY MS. CRAIG, CONTINUING) IF YOU WILL PLEASE LOOK AT LINE 10, I'M GOING TO ASK YOU THE QUESTION AND IF YOU WILL PLEASE RESPOND.

"DID YOU EVER SEE THE VIDEO ON SMOKING, DRINKING AND DRUGS AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?"

AND YOUR ANSWER AT LINE 12 IS?

A. "YES, WHILE I WAS INPATIENT." I'M SORRY, I DID SAY IT WHILE I WAS INPATIENT.

Q. IF WE COULD PLEASE ANSWER - IF YOU WOULD PLEASE ANSWER IT THE WAY IT WAS SAID IN THE DEPOSITION.

A. "WHILE I WAS INPATIENT, YES, I BELIEVE SO. WE WATCHED

[NICHOLSON 310]

DIFFERENT VIDEOS."

Q THANK YOU. NOW, STILL AT THAT SAME TIME, FEBRUARY 17 1994, YOU READ THE SOLICITOR'S LETTER THAT MS. BROWN HANDED TO YOU, BUT YOU REFUSED TO SIGN THAT LETTER. DO YOU REMEMBER READING THE SOLICITOR LETTER?

A. YES.

Q. AND YOU REFUSED TO SIGN THAT LETTER?
A. CORRECT.
MS. CRAIG: I WOULD LIKE TO OFFER INTO EVIDENCE DEFENDANTS' EXHIBIT 74, PLEASE.
THE COURT: HAVE YOU SEEN IT?
R. WHERRY: YES.
HE COURT: ANY OBJECTION?
R. WHERRY: NO.
Q. (BY MS. CRAIG, CONTINUING) AND THEN YOU DELIVERED YOUR SON ON FEBRUARY 21, 1994; IS THAT CORRECT?
A. CORRECT.
Q. OKAY. NOW, MS. NICHOLSON, WHILE YOU WERE PREGNANT YOU KNEW THAT USING DRUGS COULD BE DETRIMENTAL TO YOUR HEALTH AND THE MENTAL HEALTH OF YOUR CHILD IN UTERO; IS THAT CORRECT?
A. YES. MY WAY OF THINKING AT THAT TIME WAS I WAS GOING TO MY DOCTORS' APPOINTMENTS AND I THOUGHT THAT EVERYTHING WAS OKAY BECAUSE NOTHING WAS SAID, SO I FIGURED THE BABY WAS OKAY AND SO I COULDN'T SEEM TO STOP USING. AND THERE WAS NOTHING THAT I COULD DO ABOUT THE METHADONE.

[NICHOLSON 311]

Q. BUT YOU KNEW THAT USING DRUGS COULD BE DETRIMENTAL TO YOUR HEALTH AND THE HEALTH OF THE BABY; IS THAT CORRECT?

A. I'M NOT SURE HOW TO ANSWER THAT, BECAUSE I THOUGHT BECAUSE EVERYTHING WAS OKAY WITH MY PREGNANCY, I WASN'T SURE THAT IT COULD BE DETRIMENTAL.
Q. OKAY.
A. I KNEW I SHOULDN'T BE DOING IT.
Q. BUT MY QUESTION IS, WHILE YOU WERE PREGNANT, YOU KNEW THAT USING DRUGS COULD BE DETRIMENTAL TO YOUR HEALTH AND THE HEALTH AND MENTAL DEVELOPMENT OF YOUR CHILD IN UTERO?
A. YES.
Q. NO EMPLOYEE AT THE MEDICAL UNIVERSITY FORCED YOU TO UNDERGO STERILIZATION OR HAVE YOUR TUBES TIED; IS THAT CORRECT?
A. CORRECT.
Q. IN EARLY FEBRUARY, 1994, YOU WERE INVOLUNTARILY COMMITTED TO THE INSTITUTE OF PSYCHIATRY BY THE CHARLESTON COUNTY SUBSTANCE ABUSE; IS THAT CORRECT?
A. THAT IS CORRECT.
Q. NOW, THAT WAS ON FEBRUARY 7, 1994. AND YOU WERE ONLY IN THERE FOR TWO DAYS; IS THAT CORRECT?
A. CORRECT.
Q. AND A REASON WHY YOU WERE ONLY IN THERE FOR TWO DAYS BECAUSE YOUR ATTORNEY SUSAN DUNN CAME IN AND TOOK YOU INTO PROBATE COURT AND GOT YOU OUT OF SUBSTANCE ABUSE TREATMENT?

* * *

[DARLENE NICHOLS0N 314]

CONSTITUTIONAL PROCESS.
THE COURT: OKAY. I UNDERSTAND. LET ME THINK ABOUT IT.
MS. CRAIG: OKAY.
THE COURT: I'LL PERMIT IT.
MS. CRAIG: THANK YOU, YOUR HONOR.
Q. (BY MS. CRAIG, CONTINUING) MRS. NICHOLSON, I WAS ASKING YOU ABOUT YOUR FEBRUARY 7, 1994, ADMISSION INTO SUBSTANCE ABUSE TREATMENT. YOU STATED THAT YOU LEFT SUBSTANCE ABUSE TREATMENT TWO DAYS LATER, FEBRUARY 9, 1994. AND THE REASON WHY YOU LEFT IS AT THE ASSISTANCE OF YOUR ATTORNEY SUSAN DUNN; IS THAT CORRECT?
A. YES. CAN I EXPLAIN WHY I WAS COMMITTED TO BEGIN WITH?
THE COURT: CERTAINLY.
A. THAT WAS WHEN I TALKED ABOUT EARLIER AND I ALWAYS USING PERCODANS, WHICH, ARE OPIATES LIKE HEROIN, IT'S NOT FOR COCAINE. THEY WERE LOWERING MY METHADONE DOSE AND I HAD GOTTEN SCARED, I WAS GETTING SICK. I USED THE PERCODAN TO REPLACE THE METHADONE. AND MY COUNSELOR MAINE GAILLARD SPOKE WITH SHIRLEY BROWN, AND THEY DECIDED TO HAVE ME COMMITTED IS WHAT I WAS TOLD BY MAINE GAILLARD. I GOT OUT ON THE BASIS THAT IT WAS, I WAS NOT EXAMINED BY A DOCTOR. THEY DID RAISE

MY METHADONE DOSE BACK UP SO I WOULD NOT BE GETTING SICK. SO I - THAT'S HOW I GOT OUT, BECAUSE OF MY METHADONE DOSE ACTUALLY SHOULD NOT HAVE BEEN DROPPED DURING MY PREGNANCY

[NICHOLSON 315]

DURING THAT TIME TO BEGIN WITH, THEREFORE I WOULD NOT HAVE BEEN GETTING SICK.

Q. OKAY. A POINT OF CLARIFICATION. IT WAS CHARLESTON COUNTY SUBSTANCE ABUSE THAT COMMITTED YOU TO THE INSTITUTE OF PSYCHIATRY, IT WAS NOT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA; IS THAT CORRECT?

A. CORRECT.

Q. OKAY. NOW, YOU WERE ADMITTED INTO THE INSTITUTE OF PSYCHIATRY AND THEN TWO DAYS LATER THEY TOOK YOU OUT, THAT WOULD BE FEBRUARY 9, 1994. NOW FIVE DAYS LATER, FEBRUARY 14, 1994, YOU VOLUNTARILY COMMITTED YOURSELF BACK INTO THE INSTITUTE OF PSYCHIATRY?

A. RIGHT.

Q. IS THAT CORRECT?

A. THAT'S CORRECT.

MS. CRAIG: YOUR HONOR, BEFORE I GO INTO THE NEXT LINE OF QUESTIONING MAY I APPROACH TO DISCUSS IT?

THE COURT: YES.

(SIDEBAR.)

MS. CRAIG: I WOULD LIKE TO GO INTO WHETHER OR NOT SHE HAS CUSTODY.

THE COURT: WHAT?

MS. CRAIG: WHETHER SHE HAS CUSTODY OF ALL OF HER CHILDREN. SHE TESTIFIED EARLIER SHE HAS A VERY CLOSE RELATIONSHIP WITH HER CHILD AND IT WAS TRAUMATIC TO HER NOT TO

[NICHOLSON 316]

BE ABLE TO GO TO HIM BEFORE SHE WAS INVOLUNTARILY COMMITTED TO SUBSTANCE ABUSE TREATMENT, AND I WOULD LIKE TO ASK HER WHETHER SHE HAS CUSTODY OF THAT CHILD.

THE COURT: I'M NOT GOING INTO THAT.

MR. WHERRY: THANK YOU.

Q. (BY MS. CRAIG, CONTINUING) ONE LAST QUESTION, MS. NICHOLSON. YOU CONTINUE TO GO TO THE MEDICAL UNIVERSITY FOR YOUR MEDICAL TREATMENT?

A. YES, I DO.

MS. CRAIG: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: ANYTHING ON REDIRECT?

MR. WHERRY: THREE REDIRECT.

REDIRECT EXAMINATION

BY MR. WHERRY:

Q. DO YOU CONTINUE TO GO TO MUSC BECAUSE THAT'S WHERE YOUR INSURANCE -

MS. CRAIG: I'M SORRY, HE IS LEADING HIS WITNESS.

THE COURT: DISREGARD THE QUESTION AND ANSWER.

Q. (BY MR. WHERRY, CONTINUING) WHY DO YOU CONTINUE TO GO TO MUSC FOR YOUR MEDICAL TREATMENT?

A. BECAUSE I HAVE MEDICAID AND I HAVEN'T BEEN ABLE TO FIND ANYONE ELSE WHO WILL ACCEPT IT.

Q. YOU INDICATED THAT DSS CAUSED YOU TO BE COMMITTED TO THE INPATIENT PSYCHIATRIC DEPARTMENT?

A. I'M SORRY.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF CONYERS O'BRYAN

[O'BRYAN 596]

Q. I WANT TO ASK YOU FIVE POINTS ABOUT THIS LAWSUIT SUBJECT . MATTER, THIS INTERAGENCY POLICY.
THE SEQUENCE OF EVENTS THAT LED UP TO THE APPROVAL AND IMPLEMENTATION OF THIS POLICY AT THE MEDICAL UNIVERSITY, WAS IT WITHIN THE PROPER AND NORMAL COMMITTEE APPROVAL PROCESS?
A. YES, IT WAS.
Q. WERE THERE ANY DEPARTURES FROM THE NORMAL PROCEDURE OR SEQUENCE OF EVENTS FOR THE ADOPTION OF THIS POLICY?
A. NO.
Q. HAS THE MEDICAL UNIVERSITY ALWAYS - AND YOU HAVE BEEN CHAIRMAN FOR HOW MANY YEARS?
A. TWO AND A HALF YEARS.
Q. AND SERVED ON THE BOARD FOR HOW MANY YEARS?
A. TWENTY YEARS.
Q. SIR?
A. TWENTY YEARS.
Q. TWENTY YEARS.
IN YOUR TWENTY YEARS ON THE BOARD, HAS THE MEDICAL

UNIVERSITY ALWAYS COMPLIED WITH MANDATORY RULES AND LAWS THAT REQUIRE REPORTING CHILD ABUSE?
A. YES, TO MY KNOWLEDGE.
Q. IS THE POLICY, THIS INTERAGENCY POLICY, CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS AND STANDARD AND PHILOSOPHIES?
A. YES, IT IS.

[O'BRYAN 597]

Q. WHAT WAS THE GOAL, AS YOU UNDERSTOOD IT, OF THIS POLICY?
A. THE GOAL WAS BETTER PROTECTION FOR FETUS AND MOTHER.
Q. WAS THERE ANY INTENTION TO DISCRIMINATE AGAINST BLACK WOMEN?
A. NONE.
MR. HOOD: THANK YOU VERY MUCH, DOCTOR.

<u>CROSS-EXAMINATION</u>

BY MS. PALTROW:
Q. DR. O'BRYAN, YOU ARE A PART OF COMMITTEE THAT APPROVED THIS POLICY; IS THAT CORRECT?
A. NO.
Q. YOU'RE CURRENTLY THE HEAD OF THE COMMITTEE NOW; IS THAT CORRECT?
A. NO.
Q. THE TRUSTEE?
A. NO.
Q. TELL ME AGAIN WHAT YOUR POSITION IS.
A. BEG YOUR PARDON.
Q. TELL ME AGAIN WHAT YOUR POSITION IS?

A. I'M CHAIRMAN OF THE BOARD OF TRUSTEES.
Q. IN THAT POSITION REGARDING THIS POLICY, WERE YOU PRESENTED EVER WITH A SINGLE STUDY EVEN SUGGESTING THAT ARRESTING AND THREATENING ARREST OF PREGNANT SUBSTANCE ABUSERS WILL IMPROVE HEALTH OUTCOMES OF THE UNBORN?
A. I WAS NOT ON THAT COMMITTEE AT THAT TIME. I WAS NOT

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF CELEST PATRICK

[PATRICK 3]

(TESTIMONY EXCERPT OF CELEST PATRICK, 11-25-96.)

CELEST PATRICK, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. WHERRY:

Q. DR. PATRICK, WOULD YOU TELL US, PLEASE, WHAT YOUR OCCUPATION OR PROFESSION IS.

A. I'M A NEONATOLOGIST AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.

Q. WHAT DOES A NEONATOLOGIST DO? WHAT IS THAT?

A. A NEONATOLOGIST IS A PHYSICIAN WHO IS TRAINED IN PEDIATRICS AND GETS ADDITIONAL TRAINING IN THE CARE OF BABIES LESS THAN 30 DAYS OF AGE.

Q. WHAT IS PEDIATRICS?

A. PEDIATRICS IS THE CARE OF CHILDREN LESS THAN 18 YEARS OLD.

Q. DOCTOR, WHERE DID YOU GO TO COLLEGE?

A. I WENT TO FURMAN UNIVERSITY FOR TWO YEARS AND THEN I WENT TO THE UNIVERSITY OF SOUTH CAROLINA AND GOT MY BS IN PHARMACY.

Q. AND YOUR GRADUATE DEGREE?
A. THE MEDICAL UNIVERSITY IN 1982.
Q. AND WHAT DEGREE WAS THAT THAT YOU RECEIVED?
A. THE M.D. DEGREE.
Q. AFTER RECEIVING YOUR M.D. DEGREE, DID YOU UNDERTAKE FURTHER STUDY?
A. YES, I DID. THREE YEARS OF PEDIATRIC RESIDENCY TRAINING

* * *

[PATRICK 6]

Q. I TAKE IT, DOCTOR, AFTER COLLEGE, WHAT YOU'RE TELLING US IS THAT YOUR EDUCATION TOOK TEN YEARS; IS THAT RIGHT?
A. THAT'S ABOUT RIGHT.
Q. AND, DOCTOR, ARE YOU PRESENTLY ENGAGED IN THE PRACTICE OF MEDICINE?
A. YES, I AM. I WORK PART-TIME AT THE MEDICAL UNIVERSITY.
Q. AND IS THAT IN THE FIELD OF PERINATAL NEONATOLOGY?
A. YES.
Q. DOCTOR, ARE YOU LICENSED TO PRACTICE MEDICINE IN ANY STATE?
A. JUST SOUTH CAROLINA.
Q. DOCTOR, DIRECTING YOUR ATTENTION TO THE FALL OF NINETEEN HUNDRED AND EIGHTY-NINE, WHERE WERE YOU EMPLOYED THEN?
A. I WAS AT THE MEDICAL UNIVERSITY.
Q. IN WHAT CAPACITY, DOCTOR?
A. I WAS WORKING FULL-TIME THEN. I WAS ASSISTANT PROFESSOR

OF PEDIATRICS.
Q. DOCTOR, DID YOU ALSO HOLD ANY DEPARTMENT POSITIONS?
A. I WAS THE MEDICAL DIRECTOR FOR THE NEONATAL INTENSIVE CARE UNIT.
Q. WHAT DOES THAT MEAN?
A. IT MEANS THAT I WAS -- IT DIDN'T MEAN THAT I WAS IN CHARGE OF INDIVIDUAL PATIENT CARE, I WAS ON SERVICE OR DOING PATIENT CARE FOR MOST OF THE YEAR, BUT IT MEANT THAT I WAS OVERSEEING THE WHOLE UNIT, WHICH IS A 36-BED INTENSIVE CARE

[PATRICK 7]

UNIT.
Q. ARE YOU AWARE, IN GENERAL TERMS ANY'HOW, OF WHAT WE HAVE BEEN CALLING THE INTERAGENCY POLICY?
A. YES, I AM.
Q. WHEN WAS THE FIRST TIME THAT YOU BECAME AWARE OF THAT POLICY? GENERALLY.
A. GENERALLY, JUST THE FALL OF 1988.
Q. AND HOW DID YOU COME TO LEARN ABOUT IT, DR. PATRICK?
A. THERE WERE A SERIES OF MEETINGS WITHIN OUR DIVISION AND WHERE WE WERE -- AND THIS IS JUST A STAFF UNIT. WHEN I SAY WE, THAT WE WERE PRESENTED WITH A POLICY THAT THAT WOULD BE WHERE WE WERE GOING.
Q. YOU SAID WITHIN OUR DIVISION?
A. RIGHT.
Q. WHAT IS YOUR DIVISION?

A. THE DIVISION OF NEONATALOGY. I THINK AT THE TIME THERE WERE ELEVEN OF US IN THE DIVISION.
Q. WHEN YOU SAY ELEVEN OF YOU, IS THAT DOCTORS?
A. YES.
Q. WOULD YOU TELL THE JURY -- WELL, FIRST OF ALL, WHO INTRODUCED YOU TO THE POLICY?
A. I REALLY DON'T RECALL SPECIFICALLY WHO IT WAS. I'M SORRY.
Q. FOLLOWING BEING INTRODUCED TO THE POLICY, WAS THERE OR WAS THERE NOT DISCUSSION AMONG THE PHYSICIANS AND STAFF IN THE

[PATRICK 8]

NEONATAL DEPARTMENT OR DIVISION CONCERNING THE POLICY?
A. YES, THERE WAS.
Q. AS A RESULT OF THAT, DID YOU TAKE ANY PARTICULAR ACTION AS THE MEDICAL DIRECTOR?
A. I DISCUSSED THE POLICY WITH DR. PITTARD, WHO IS OUR DIVISION CHIEF. AND THEN I DISCUSSED THE POLICY WITH DR. DARBY, WHO IS THE CHAIRMAN OF THE DEPARTMENT OF PEDIATRICS.
Q. AS A RESULT OF DISCUSSING THE POLICY WITH DR. DARBY, AND AS A RESULT OF WHAT HE TOLD YOU, DID YOU TAKE ANY FURTHER ACTION?
A. YES, I DID.
Q. AND WHAT WAS THAT? JUST IN GENERAL TERMS?

A. I WROTE A LETTER THAT I SENT TO SEVERAL OF THE CLINICAL HEADS OF THE HOSPITAL THAT I THOUGHT WERE PERTINENT TO THE POLICY, AND JUST EXPRESSED MY CONCERN ABOUT IT.
Q. DOCTOR, LET ME SHOW YOU WHAT HAS BEEN MARKED PLAINTIFFS' EXHIBIT NUMBER 26 FOR IDENTIFICATION. AND ASK WHETHER YOU RECOGNIZE THIS AS BEING THE LETTER THAT YOU WROTE?
A. YES; IT IS.
Q. DOES IT BEAR YOUR SIGNATURE?
A. YES, IT DOES.
Q. WHO DID YOU SEND IT TO?
A. THIS PARTICULAR COPY WENT TO DR. EDWARDS.
Q. WHO IS DR. EDWARDS?
A. HE IS THE PRESIDENT OF THE MEDICAL UNIVERSITY.

[PATRICK 9]

Q.DR. PATRICK, LET ME SHOW YOU WHAT HAS BEEN MARKED PLAINTIFFS' EXHIBIT 27 FOR IDENTIFICATION, AND ASK WHETHER YOU CAN RECOGNIZE THIS DOCUMENT?
A. YES, I DO.
Q. WHAT IS THAT DOCUMENT, JUST AS TO GENERAL TYPE INSOFAR AS IT RELATES TO PLAINTIFFS' EXHIBIT 26.
A. IT WAS A REPLY FROM DR. EDWARDS SAYING THAT HE APPRECIATED ME SHARING MY VIEWS.
Q. DON'T TELL US WHAT IT SAID YET.
A. I'M SORRY.

Q. THAT'S A REPLY FROM DR. EDWARDS TO YOUR LETTER?
A. YES.
MR. WHERRY: YOUR HONOR, AT THIS TIME POINT IN TIME I WOULD MOVE INTO EVIDENCE PLAINTIFFS' EXHIBIT 26 AND 27.
THE COURT: ANY OBJECTION?
MR. HOOD: UNDER 602, 701 AND 403. AND THE DETAILS ARE SET FORTH IN THE MEMORANDUM THAT WE FILED WITH THE COURT.
THE COURT: I SUSTAIN THE OBJECTION AT THIS TIME. THE DOCUMENT IS CLEARLY HEARSAY.
HEARSAY, LADIES AND GENTLEMEN OF THE JURY, WE HAVE DISCUSSED IT BEFORE, THE CONTEXT IN WHICH I HAVE DISCUSSED IT HAS BEEN WHERE ONE WITNESS ATTEMPTS TO TESTIFY WHAT SOMEBODY ELSE SAID. THAT'S NOT EXACTLY WHAT WE HAVE GOT HERE, BUT THE DEFINITION OF HEARSAY IS A STATEMENT OTHER THAN ONE MADE BY THE DECLARANT, THE DOCTOR HERE, WHILE TESTIFYING AT TRIAL OR

[PATRICK 10]

HEARING OFFERED IN EVIDENCE TO PROVE THE TRUTH OF THE MATTER ASSERTED.
THE LETTER IS A STATEMENT MADE BY HER AT A TIME OTHER THAN WHEN SHE IS IN COURT TESTIFYING UNDER OATH, AND THEREFORE IT'S HEARSAY WITHIN THE DEFINITION OF THE FEDERAL

RULES OF EVIDENCE. WHETHER IT HAS ANY RELEVANCE OR PROBATIVE VALUE FOR ANYTHING OTHER THAN THE TRUTH OF THE MATTER I'LL JUST HAVE TO WAIT UNTIL I HAVE HEARD MORE OF HER TESTIMONY. BUT IT IS HEARSAY. IT APPEARS TO ME THAT IT IS ALSO CONTAINS HEARSAY WITHIN HEARSAY.

MR. HOOD MAKES THE OBJECTION UNDER RULE 602. I THINK THAT PROBABLY THAT'S SOMEONE TESTIFYING ABOUT SOMETHING ABOUT WHICH THEY DON'T HAVE KNOWLEDGE. I THINK SAYING IT'S HEARSAY WITHIN HEARSAY IS BASICALLY ADDRESSING THE SAME OBJECTION. BUT FOR THE TIME BEING, I'M GOING TO SUSTAIN THE OBJECTION ON THE GROUNDS OF HEARSAY. OBVIOUSLY I'LL PERMIT YOU TO LAY WHATEVER ADDITIONAL FOUNDATION YOU WISH TO DO, BUT -- YOU WISH TO MAKE, BUT SINCE IT IS OFFERED FOR ITS TRUTH I THINK WE NEED TO DEAL WITH THAT FIRST.

MR. WHERRY: IT REALLY, YOUR HONOR, WAS BEING OFFERED FOR THE TRUTH IN ONE RESPECT, BUT IN ANOTHER IT WAS BEING OFFERED FOR THE FACT THAT THERE WAS A COMMUNICATION TO DR. EDWARDS.

THE COURT: WELL, AS OF RIGHT NOW I'M NOT PREPARED TO RULE THAT IT'S ADMISSIBLE FOR ANYTHING OTHER THAN ITS

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[PATRICK 22]

YOU HAD STAFF PRIVILEGES AT THREE OTHER HOSPITALS?
A. YES.
Q. SAINT FRANCIS, ROPER AND TRIDENT?
A. YES.
Q. WAS THE INTERAGENCY POLICY AS YOU KNEW IT APPLIED AT THOSE HOSPITALS?
A. NO.
Q. DID YOU MAKE AN INQUIRY, DOCTOR, AS TO WHY NOT?
MR. HOOD: THE ANSWER WOULD HAVE TO BE HEARSAY, YOUR HONOR.
THE COURT: THIS ONE THEORETICALLY WOULD NOT. THIS ONE CALLS FOR A YES OR NO.
THE WITNESS: COULD YOU REPEAT THE QUESTION?
Q. (BY MR. WHERRY, CONTINUING) DID YOU MAKE AN INQUIRY AS TO WHY IT WAS NOT?
A. YES, I DID.
Q. WHO DID YOU MAKE THE INQUIRY OF?
A. MY DIVISION CHIEF, BILL PITTARD.
Q. BILL PITTARD?
A. YES.
Q. AND DR. PITTARD WAS YOUR DIVISION CHIEF AT THE MEDICAL UNIVERSITY?
A. YES.
Q. WAS DR. PITTARD AFFILIATED WITH THE OTHER HOSPITALS ALSO?
A. MAYBE -- COULD I EXPLAIN WHAT OUR POSITION IS WITH THE

[PATRICK 23]

HOSPITAL? WOULD THAT BE HELPFUL?
Q. WELL, LET ME ASK THE QUESTION. EXPLAIN, PLEASE, WHAT YOUR POSITION IS WITH RESPECT TO THE OTHER THREE HOSPITALS, SAINT FRANCIS, TRIDENT AND ROPER?
A. OKAY. WE ARE CONSULTANTS AT THOSE HOSPITALS. ALL THE NEONATOLOGISTS WITHIN OUR DIVISION HAVE PATIENTS AT THOSE HOSPITALS, BUT WE STILL CONSIDER OUR BOSS, WHATEVER, DOCTOR PITTARD OUR DIVISION HEAD, AND THAT'S WHO WE REPORT TO. NOW HE DOESN'T HAVE A POSITION AT THE OTHER HOSPITALS AS, YOU KNOW, LIKE A DIRECTOR OR ANYTHING LIKE THAT.
Q. WHAT DID DR. PITTARD SAY TO YOU WHEN YOU INQUIRED ABOUT WHY THE INTERAGENCY POLICY IS NOT APPLIED AT THE OTHER HOSPITALS?
THE COURT: LET ME SEE YOU UP HERE JUST SIC MINUTE.
(SIDEBAR AS FOLLOWS:)
THE COURT: NOW WHAT IS HER ANSWER GOING TO BE?
MR. WHERRY: IN SUBSTANCE IT IS THAT IT WOULD CAUSE TOO MUCH HAVOC, THERE WOULD BE TOO MUCH OF AN UPROAR, AND THEY WEREN'T JUST GOING TO DO IT. DR. PITTARD IS A NAMED DEFENDANT.

THE COURT: I UNDERSTAND THAT.
TELL ME WHAT THE ANSWER IS GOING TO BE.
MR. WHERRY: IT WILL CAUSE TOO MUCH OF AN UPROAR TO APPLY THAT POLICY AT THE OTHER HOSPITALS.

[PATRICK 24]

THE COURT: OKAY.
MR. WHERRY: AND THE WORD UPROAR MIGHT NOT HAVE BEEN THE WORD THAT WAS USED. THAT WOULD CAUSE TOO MUCH TROUBLE, TOO MUCH OF A PROBLEM, SOMETHING OF THAT NATURE.
THE COURT: OKAY.
MR. HOOD: WE HAD A 403 AREA. ARE WE GOING TO HAVE TO BRING AN ADMINISTRATOR AND CHAIRMAN OF THE DEPARTMENT ALL OVER TOWN TO TALK ABOUT THIS.
THE COURT: I DON'T KNOW.
MR. HOOD: THIS IS PURE HEARSAY AND HAS NOTHING TO DO WITH WHAT THE MEDICAL UNIVERSITY IS TRYING TO ACCOMPLISH.
THE COURT: I DON'T KNOW WHY IT'S HEARSAY. HE IS A NAMED DEFENDANT.
MR. HOOD: APPARENTLY THERE IS NOT AN INTERAGENCY POLICY QUESTION HERE. ONLY SOME INFERENCE THAT YOU GET FROM WHAT IS NOT AN ISSUE IN THE CASE ABOUT IT.
THE COURT: ABOUT WHAT?

MR. HOOD: ABOUT THE WHOLE SUBJECT MATTER HERE. THEY'RE TRYING TO CREATE SOMETHING THAT DOESN'T EXIST, HAS NOTHING TO DO WITH THIS LAWSUIT. WE'RE DEALING WITH ONE INSTITUTION, ONE STATE ENTITY.

THE COURT: OKAY. I UNDERSTAND. INDULGE ME JUST A MINUTE.

(PAUSE IN PROCEEDINGS.)

THE COURT: LET ME SEE YOU BACK UP HERE ONE MORE

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[PATRICK 27]

QUESTION ASKED.

Q. (BY MR. WHERRY, CONTINUING) DOCTOR, WHEN YOU WORKED AT TRIDENT, AND AT ROPER AND SAINT FRANCIS, WHO PAID YOUR SALARY?

A. THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.

Q. DID YOU ATTEND A MEETING, DOCTOR, OF THE NEONATOLOGY STAFF AND REPRESENTATIVES OF THE SOLICITOR'S OFFICE AND OTHER MEMBERS OF THE HOSPITAL STAFF CONCERNING THIS POLICY?

A. YES, I DID.

Q. APPROXIMATELY WHEN WAS THAT?

A. I -

Q. A SEASON IS FINE.

A. THE LATE FALL OF '89.

Q. WHO WAS AT THAT MEETING, AS BEST YOU RECALL?

A. AS I RECALL ALMOST ALL OF THE NEONATOLOGISTS WERE THERE.

THERE WERE SEVERAL MEMBERS OF THE NURSING STAFF OF THE VARIOUS UNITS THAT WERE INVOLVED, THE OBSTETRICS AND NEONATAL INTENSIVE CARE UNIT AND NEWBORN NURSERY. THERE WERE SOME REPRESENTATIVES FROM SOCIAL SERVICES WITHIN THE HOSPITAL. THERE WAS A REPRESENTATIVE FROM THE POLICE DEPARTMENT.

Q. WHAT POLICE DEPARTMENT?

A. CHARLESTON POLICE DEPARTMENT. I BELIEVE THAT MR. JOE GOOD, WHO IS THE HOSPITAL ATTORNEY, WAS THERE.

Q. WAS MR. CONDON THERE?

A. I DON'T RECALL.

Q. DO YOU RECALL WHETHER OR NOT THERE WAS A REPRESENTATIVE

[PATRICK 28]

OF THE SOLICITOR'S OFFICE THERE?

A. I BELIEVE THERE WAS.

Q. WHAT WAS THE PURPOSE OF THAT MEETING?

A. TO -- TO REVIEW THE INTERAGENCY POLICY WITH ALL OF THE DIFFERENT MEDICAL PERSONNEL.

Q. WHEN YOU SAY REPRESENTATIVES OF THE NURSING DEPARTMENTS WERE THERE, WAS SHIRLEY BROWN THERE?

A. YES, SHE WAS.

Q. LET ME HAND YOU WHAT HAS BEEN MARKED PLAINTIFFS' EXHIBIT NUMBER 23 FOR IDENTIFICATION, AND ASK YOU WHETHER OR NOT SAYING THIS DOCUMENT, PLAINTIFFS NUMBER 23 FOR

IDENTIFICATION, REFRESHES YOUR MEMORY AS TO THE SPECIFIC DATE OF THAT MEETING?
A. YES, IT DOES.
Q. WHAT WAS THE SPECIFIC DATE OF THAT MEETING?
A. IT WAS DECEMBER THE 7, 1989.
Q. WHO WAS THE PRINCIPAL SPEAKER AT THAT MEETING?
A. I REALLY DON'T RECALL ANY ONE PERSON.
Q. THE DOCUMENT THAT YOU HAVE BEFORE YOU, WAS THAT PROVIDED TO YOU AT THE MEETING?
A. IT WAS PROVIDED TO ME BEFORE THE MEETING THROUGH OUR SECRETARY FROM DR. PITTARD.
Q. DID YOU LEARN AT THE MEETING WHAT THAT DOCUMENT WAS, PLAINTIFFS' EXHIBIT 23?
A. YES.

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[PATRICK 31]

MR. WHERRY: YES, SIR.
Q. (BY MR. WHERRY, CONTINUING) DO YOU, DOCTOR, RECALL EACH OF THE THINGS DISCUSSED AT THAT DECEMBER 7TH MEETING?
A. YES, I DO.
Q. DO YOU RECALL THE CIRCUMSTANCES UNDER WHICH PREGNANCIES WERE TO BE SCREENED BY URINE DRUG SCREENS?
A. I RECALL THAT THERE WAS A LIST OF CRITERIA THAT WE WERE

SUPPOSED TO USE TO FOLLOW THAT PROTOCOL, BUT I COULDN'T NAME THEM ALL.

Q. IS THERE ANYTHING THAT WOULD REFRESH YOUR RECOLLECTION ABOUT WHAT THEY WERE?

A. WELL, I CAN TRY TO LIST THEM, BUT --

Q. OKAY.

A. ONE OF THEM WAS THE ABSENCE OF PRENATAL CARE, LATE PRENATAL CARE, UNEXPLAINED CONGENITAL ANOMALIES, PAST HISTORY OF DRUG ABUSE, ABRUPTIO PLACENTA, WHICH IS WHERE THE PLACENTA SEPARATES EARLY FROM THE UTERINE WALL. I GUESS A POSITIVE PREVIOUS URINE DRUG SCREEN. THAT'S REALLY ALL I CAN REMEMBER.

Q. IF THAT -- ONE OF THOSE CIRCUMSTANCES WAS PRESENT, DOCTOR, DO YOU REMEMBER -- DO YOU REMEMBER WHAT, IF ANYTHING, THE POLICY SAID TO DO ONCE THE URINE WAS TAKEN FROM THE PATIENT?

A. THERE WAS A PROCEDURE TO BE FOLLOWED BY THE OBSTETRICS STAFF THAT I REALLY DON'T FEEL COMFORTABLE EXACTLY ADDRESSING

[PATRICK 32]

BECAUSE THAT WASN'T THE PROCEDURE WE WERE USING. I CAN ADDRESS THE PART ABOUT THE NEWBORN.

Q. WITH RESPECT TO THE NEWBORN, WHAT WAS THE POLICY WITH

RESPECT TO WHAT WAS TO HAPPEN TO THE URINE AFTER IT WAS COLLECTED FROM THE PATIENT? THE BABY?

A. IT WAS TO BE SUBMITTED TO THE MEDICAL UNIVERSITY LAB THROUGH A CHAIN OF CUSTODY, AND THEN TESTED AND REPORTED BACK TO THE DOCTOR.

Q. PRIOR TO THE INTERAGENCY POLICY, DID THE NEONATOLOGY DEPARTMENT USE CHAIN OF CUSTODY IN SENDING URINE DRUG SCREENS OF THE BABY TO THE LABORATORY?

A. NOT TO MY KNOWLEDGE.

Q. DID YOU INQUIRE AT THIS MEETING AS TO WHY IT WAS GOING TO BE DONE PURSUANT TO THE POLICY?

A. NO, I DID NOT.

Q. DO YOU KNOW WHETHER THAT WAS DISCUSSED AT THE MEETING?

A. I DON'T RECALL.

Q. IF A POSITIVE SCREEN CAME BACK FROM THE LABORATORY FROM ONE OF THESE CHAIN OF CUSTODY URINE SCREENS, WHAT WAS IT - YOUR UNDERSTANDING THAT YOU WERE TO DO AT THAT TIME?

A. WE WERE TO REPORT THEIR -- THE POSITIVE SCREEN TO THE CITY POLICE DEPARTMENT OR THE SOLICITOR'S OFFICE.

Q. PRIOR TO THE INTERAGENCY POLICY, WAS THAT EVER DONE IN THE NEONATOLOGY DEPARTMENT?

A. NO, IT WASN'T.

Q. WAS THAT DONE, DOCTOR, IN THE OTHER THREE HOSPITALS INSOFAR AS YOUR FUNCTIONING IN THOSE HOSPITALS WAS CONCERNED?

MR. HOOD: IF THE COURT PLEASE, AS TO THE OTHER HOSPITALS UNDER SKINNER, 316 UNITED STATES 535, I BELIEVE IT'S IRRELEVANT.

THE COURT: I THINK I HAVE ALREADY RULED ON IT, AND I'LL BE GLAD TO LOOK AT THAT CASE.

MR. HOOD: THANK YOU.

THE COURT: GO AHEAD.

THE WITNESS: I'M SORRY.

A. NO, IT WAS NOT.

Q. WERE YOU TOLD AT THIS MEETING WHETHER OR NOT YOU WERE TO REPORT TO THE POLICE THE FATHER OF THE CHILDREN WHO HAD THE POSITIVE DRUG SCREENS?

A. I DON'T THINK THAT QUESTION CAME UP.

Q. WERE YOU TOLD AT THAT MEETING WHO WAS COORDINATING THE APPLICATION OF THE INTERAGENCY POLICY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. I DON'T RECALL THAT.

Q. DOCTOR, IN THE NEONATOLOGY UNIT, WERE ANY OTHER DRUGS OTHER THAN COCAINE SCREENED FOR IN NEONATAL URINE?

A. YES.

Q. SUCH AS, DOCTOR? AND BY THE WAY, I'M TALKING ABOUT DURING THE POLICY PERIOD?

[PATRICK 34]

A. WHEN WE SENT A URINE DRUG SCREEN OFF IT GETS SCREENED FOR SEVERAL THINGS. IT GETS SCREENED FOR AMPHETAMINES, OPIATES, BARBITUATES AND COCAINE.

Q. WERE ANY DRUGS OTHER THAN COCAINE REPORTED TO THE CHARLESTON POLICE?

A. NOT TO MY KNOWLEDGE.

Q. WERE YOU INSTRUCTED OR WERE YOU NOT INSTRUCTED AT THIS MEETING WITH RESPECT TO THE OTHER DRUGS?

A. I REALLY DON'T RECALL.

Q. DOCTOR, WHAT IS YOUR UNDERSTANDING OF THE FORMS OF PAYMENT FOR PATIENT CARE ACCEPTED AT MUSC DURING THE POLICY PERIOD? HOW COULD PATIENTS PAY? WHAT WAS ACCEPTED BY MUSC, BESIDES CASH?

A. WELL OBVIOUSLY INSURANCE PAYMENTS, IF THERE WAS PRIVATE INSURANCE. MEDICADE SIC PAYMENTS. I SUPPOSE CHECKS AND CREDIT CARDS.

Q. WOULD YOU EXPLAIN MEDICADE, DOCTOR?

A. MEDICADE IS THE GOVERNMENT RUN INSURANCE PROGRAM THAT CERTAIN PEOPLE -- PEOPLE APPLY FOR WHO ARE QUALIFIED.

MR. HOOD: YOUR HONOR, THIS HAS NOTHING TO DO WITH THE POLICY.

THE COURT: WHAT DOES IT HAVE TO DO WITH?

MR. WHERRY: THE AVAILABILITY OF RESOURCES WITHIN THIS GEOGRAPHIC AREA FOR THE TREATMENT OF CERTAIN CLASSES OF PEOPLE. AND THE NON-ACCEPTANCE OF THIS PAYMENT FORM BY OTHER

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[PATRICK 41]

PLACEMENT, FOR DSS PLACEMENT FOR A DECISION.

Q. DOCTOR, DID THE CIRCUMSTANCES, OR DID THEY NOT, UNDER WHICH YOU WOULD TEST THE URINE OF THESE BABIES, CHANGE FROM BEFORE THE POLICY TO AFTER THE POLICY?

A. YES.

Q. WHY DID YOU TEST THE URINE OF THE BABIES BEFORE THE POLICY?

A. WE WOULD GENERALLY TEST THEM IF WE FELT THAT THE BABIES WERE HAVING SOME CLINICAL SYMPTOMS WHERE THEY WERE ACTUALLY ACTING AS IF THEY WERE GOING INTO WITHDRAWAL OR IF THEY WERE ESPECIALLY JITTERY OR IRRITABLE.

Q. SO BEFORE THE POLICY THEY WERE DONE FOR MEDICAL REASONS?

A. YES.

Q. AFTER THE POLICY, DOCTOR, WHAT WAS THE DIFFERENCE AFTER THE POLICY BEGAN?

A. WELL, WE JUST TESTED BASED ON THE CRITERIA THAT WAS IN THAT POLICY.

Q. WERE THE TESTS, AFTER THE POLICY WAS ADOPTED, FOR MEDICAL

PURPOSES?

MR. HOOD: IF THE COURT PLEASE, SHE HAS NO KNOWLEDGE OF THAT AND I OBJECT TO IT AS IRRELEVANT AND INAPPROPRIATE FOR THIS WITNESS. SHE HAS NO FOUNDATION UPON WHICH TO HAVE ONE. SHE WAS A LAY WITNESS.

MR. WHERRY: SHE WAS DOING THE TESTING, SHE KNOWS WHY SHE DID IT.

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[PATRICK 46]

A. YOU MEAN WHEN THE POLICY STARTED TO BE CHANGED?

Q. UNDER THE POLICY ORIGINALLY, WAS THERE ANY -- WAS THERE ANY PROVISION FOR TESTING THE INFANTS?

A. I REALLY DON'T RECALL.

Q. OKAY. IN '88 AND '90, IN THAT TIME FRAME, DOCTOR, DID YOU SEE ANY INCREASE IN NEWBORN HEALTH PROBLEMS IN THE NEONATAL INTENSIVE CARE UNIT?

A. I DON'T THINK SO.

Q. DOCTOR, DOES THE TERM OUTBORN BABIES MEAN ANYTHING TO YOU?

A. YES.

Q. WHAT DOES THAT MEAN?

A. IT MEANS A BABY THAT WAS NOT BORN IN OUR HOSPITAL. THAT WAS TRANSFERRED IN FROM ANOTHER PLACE WHERE IT WAS BORN.

Q. JUST TO GIVE US SOME BACKGROUND, WHAT WOULD BE THE

CIRCUMSTANCES UNDER WHICH THAT WOULD GENERALLY HAPPEN?
A. JUST AS AN EXAMPLE, SAY IF A BABY WAS BORN AT ROPER WHO REQUIRED, SAY, A VENTILATOR OR SOME EXTRAORDINARY SURGERY, THAT KIND OF THING, THEY WOULD BE TRANSFERRED TO US FOR OUR CARE BECAUSE THEY DON'T HAVE IT AT THOSE HOSPITALS.
Q. WAS THERE ANY POLICY AT MUSC WITH RESPECT TO TESTING BABIES FOR COCAINE OF OUTBORN BABIES?
A. I DON'T RECALL THERE BEING A POLICY ADDRESSING THAT.
Q. WERE OUTBORN BABIES TESTED FOR COCAINE IN THE NEONATAL INTENSIVE CARE UNIT WHILE YOU WERE THE MEDICAL DIRECTOR OR

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[PATRICK 49]

MERELY INEFECTUAL IN ACHIEVING THE STATE'S GOAL, BUT ACTUALLY COUNTERPRODUCTIVE, THE FOCUS ON NOTIFYING THE SECOND PARENT DISTRACTED BOTH THE PARENT AND MINOR FROM THE MINOR'S IMMINENT ABORTION DECISION.
SO I THINK WHAT I HAVE READ IN THIS CASE THAT THE EVIDENCE THAT THE POLICY WAS INEFFECTIVE OR COUNTERPRODUCTIVE IS RELEVANT. THE SUPREME COURT CONSIDERED RELEVANCE IN THAT CASE. NOW TO THE EXTENT THAT THIS DOES THAT, WHAT IS THE

OTHER EVIDENCE IN THIS OTHER AREA GOING TO BE? IS THERE GOING TO BE SOME STATISTICAL EVIDENCE AS TO WHAT HAPPENED AFTER THE POLICY WAS IMPLEMENTED AS OPPOSED TO BEFORE, OR ARE WE GOING TO HAVE THIS TYPE TESTIMONY?

MS. SHOWERS: YES, SIR.

MR. HOOD: WE'RE JUST GOING TO FOCUS ON THE POLICY.

THE COURT: I THINK BASED ON THIS DECISION AND THIS STATEMENT, I'M GOING TO LET HER ANSWER THE QUESTION.

MR. WHERRY: THANK YOU, SIR.

MR. HOOD: WHAT PAGE?

THE COURT: I'M QUOTING FROM 2945. IT'S HODGSON AGAINST MINNESOTA.

THE COURT: ALL RIGHT.

Q. (BY MR. WHERRY, CONTINUING) DR. PATRICK, DID THERE COME A TIME WHEN THE INTERAGENCY POLICY WITH RESPECT TO ARRESTS STOPPED?

MR. HOOD: OBJECT ON THE GROUNDS DISCUSSED.

[PATRICK 50]

Q. (BY MR. WHERRY, CONTINUING) YOU MAY ANSWER.

A. OKAY. YES. BUT I DON'T KNOW WHEN EXACTLY.

Q. I UNDERSTAND. AFTER THAT CONDUCT STOPPED, WAS THERE ANY INCREASE IN --

THE COURT: AND, LADIES AND GENTLEMEN, LET ME SAY

THAT THAT EVIDENCE IS RELEVANT ONLY TO THE FACT THAT IT STOPPED. THE FACT THAT IT STOPPED HAS NOTHING TO DO WITH THIS CASE AS FAR AS THE RIGHTS OF THESE PLAINTIFFS' DIRECTLY IS CONCERNED. AND YOU SHOULDN'T TRY TO SPECULATE WHEN IT STOPPED OR WHY IT STOPPED, BECAUSE THAT REALLY DOESN'T MAKE ANY DIFFERENCE. BUT IS DOES, AS FAR AS THE TESTIMONY THEY'RE GETTING READY TO ASK HER ABOUT, CREATE WHAT MIGHT BE RELEVANT AND SOMETHING THAT YOU MIGHT WANT TO CONSIDER. BUT DON'T WORRY ABOUT WHY IT STOPPED OR WHEN IT STOPPED, BECAUSE THAT REALLY DOESN'T HAVE ANYTHING TO DO WITH THE CASE AND YOU SHOULDN'T CONSIDER THAT.

OKAY. YOU MAY PROCEED.

Q. (BY MR. WHERRY, CONTINUING) AFTER IT STOPPED, DOCTOR, WAS THERE ANY INCREASE IN SICK BABIES IN THE NEONATAL INTENSIVE CARE UNIT?

A. NOT TO MY KNOWLEDGE.

Q. DURING THE COURSE OF THE POLICY, DR. PATRICK, WHAT WAS YOUR UNDERSTANDING REGARDING THE TESTING OF OUTBORN CHILDREN?

A. AS I RECALL, WHICH I DON'T REMEMBER THIS COMING UP VERY

OFTEN, BUT THAT WE -- AS I RECALL WE DIDN'T TEST THEM. BUT I DON'T KNOW -- I DIDN'T TEST THEM. LIKE I SAY, I CAN'T REMEMBER.

MR. WHERRY: YOUR HONOR, I ONLY HAVE ONE OTHER AREA OF QUESTIONING OF DR. PATRICK. I HAVE ADVISED MR. HOOD OF IT AND I THINK WE SHOULD BE HEARD AT SIDEBAR.

THE COURT: ALL RIGHT, OKAY.

(SIDEBAR AS FOLLOWS:)

THE COURT: ALL RIGHT, SIR.

MR. WHERRY: JUDGE, I HAVE ADVISED MR. HOOD THAT I'M GOING TO ASK THIS WITNESS, BASED UPON HER OBSERVATIONS, HER LAY OPINION AS TO WHETHER OR NOT THIS POLICY WAS DISCRIMINATORY AGAINST POOR BLACK WOMEN. YOU KNOW WHAT HER ANSWER IS --

MR. HOOD: IF THE COURT PLEASE, I'M SCARED THE JURY CAN HEAR HIM.

MR. WHERRY: JUDGE, I APOLOGIZE. I'M NOT DOING THAT ON PURPOSE, I HAD MOUTH CANCER 12 YEARS AGO I DON'T SPEAK CLEARLY, SO I HAVE A HABIT OF SPEAKING LOUDER.

THE COURT: WHAT IS YOUR POSITION?

MR. HOOD: YOUR HONOR, IT'S ABSOLUTE SPECULATION BY THIS WITNESS, AND IT'S NOT BASED ON ANYTHING THAT RISES TO THE

LEVEL OF DALBERT OR DORSEY. IT ALLOWS A LAY WITNESS TO COME IN AND ADD SOMETHING TO THE CASE THAT SHE IS NOT QUALIFIED TO ADD. IT INVADES THE PROVINCE OF THE JURY TO TRY THE ISSUE.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF PAMELA PEAR

[PAMELA PEAR 253]

(TESTIMONY OF PAMELA PEAR, DECEMBER 4, 1996.)

- - -

PAMELA PEAR, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. DUNN:

Q. WHAT IS YOUR NAME?

A. PAMELA COLLEEN PEAR.

Q. WHERE DO YOU LIVE?

A. 29-G FRANKLIN STREET.

Q. WHERE IS THAT?

A. IN DOWNTOWN CHARLESTON.

Q. HOW OLD ARE YOU?

A. TWENTY-NINE YEARS OF AGE.

Q. WHAT IS YOUR DATE OF BIRTH?

A. 1/2/67.

Q. DID YOU HAVE OCCASION IN THE SUMMER OF 1990 TO GO TO THE MEDICAL UNIVERSITY FOR PRENATAL CARE?

A. YES.

Q. CAN YOU TELL US WHAT HAPPENED?

A. I WAS SENT THERE FROM FRANKLIN C. FETTER HEALTH CENTER. BECAUSE I WOULD ALWAYS GO INTO PRE-TERM LABOR EARLY AND I WAS A HIGH-RISK PATIENT AND - AND WITH MY DAUGHTER I WAS USING.

AND I MET SHIRLEY BROWN. THE FIRST TIME THAT I WENT THERE AND
THEY FOUND MY URINE DIRTY.

[PAMELA PEAR 254]

Q. MS. PEAR, ABOUT HOW FAR ALONG IN YOUR PREGNANCY WERE YOU
WHEN YOU WENT TO THE MEDICAL UNIVERSITY PRENATAL CARE THE
FIRST TIME?
A. ABOUT SIX, SEVEN MONTHS PREGNANT.
Q. OKAY. AND WHAT PART OF THE MEDICAL UNIVERSITY DID YOU GO
TO?
A. IT'S THE - IT'S A LITTLE SHORT STREET IN THE BACK, THE
CLINIC.
Q. DO YOU KNOW THE NAME OF THE CLINIC?
A. NO.
Q. AND DID YOU CONTINUE TO GET PRENATAL CARE THERE?
A. YES.
Q. DESCRIBE, YOU KNOW, WHEN YOU WERE SPEAKING BEFORE THAT
YOU MET SHIRLEY BROWN, DID YOU MEET HER ON YOUR FIRST MEETING,
FIRST TIME THAT YOU WENT TO PRENATAL CARE?
A. NO.
Q. WHEN DID YOU MEET HER?
A. WHEN I WENT IN ONE DAY FOR HAVING PRE-TERM LABOR I WENT
AT THE HOSPITAL. AND THEY CAME INTO THE ROOM AFTERWARD AND
TOLD ME THAT THEY FOUND COCAINE IN MY SYSTEM.

Q. WHAT ELSE DID SHE TELL YOU, IF ANYTHING?
A. IF I DIDN'T - IF I USED AGAIN, THAT I WOULD GO TO JAIL.
Q. DID SHE GIVE YOU ANY INFORMATION AT THAT MEETING?
A. NO. NO. THAT THIS WAS THE OUTCOME IF I USE AGAIN OR IF
1 COME BACK IN WITH ANOTHER DIRTY URINE THAT I WOULD GO TO

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[PAMELA PEAR 256]

THAT PREGNANCY?
A. YES.
Q. AND WHEN DID YOU RECALL GOING BACK?
A. PROBABLY ABOUT MAYBE A MONTH LATER.
Q. A MONTH LATER THAN WHAT?
A. I GOT BACK AND THEN THEY PUT ME IN PRE-TERM LABOR.
Q. WHEN YOU SAY YOU STARTED LABOR, WHAT DOES THAT MEAN?
WHATWERE YOU EXPERIENCING?
A. EARLY LABOR.
Q. WHAT DID YOU FEEL WHEN THAT HAPPENS?
A. PAIN. CONTRACTIONS.
Q. AND THIS NEXT TIME THAT YOU'RE GOING INTO THE HOSPITAL,
HOW FAR ALONG IN YOUR PREGNANCY WOULD YOU SAY YOU WERE?
A. SEVEN AND A HALF TO EIGHT MONTHS PREGNANT.
Q. OKAY. AND DID YOU GO BACK IN THE HOSPITAL OR DID YOU GO
BACK TO THE CLINIC?

A. THE HOSPITAL.
Q. AND WHAT HAPPENED AT THAT TIME THAT YOU PRESENTED AT THE HOSPITAL?
A. UMM, NURSE SHIRLEY BROWN CAME IN AGAIN AND SAID THAT MY URINE WAS DIRTY AGAIN. AND THEY ADMITTED ME. I STAYED IN THE HOSPITAL FOR ABOUT TWO DAYS. AND IT WAS ON A SATURDAY.
Q. AND THEN WHAT HAPPENED ON THAT SATURDAY?
A. IT WAS ABOUT 12 O'CLOCK AND I WAS A SECURITY GUARD FROM DOWNSTAIRS AND THERE WAS A DEPUTY CAME AND PULLED MY CURTAIN

[PAMELA PEAR 257]

AND TOLD ME THAT HE HAD A WARRANT FOR MY ARREST. AND HE READ ME MY RIGHTS.
Q. WAS THIS IN YOUR ROOM THAT THIS HAPPENED?
A. YES. THE OTHER PATIENT IN THE ROOM WITH ME AND ABOUT THREE OTHER PEOPLE IN THE ROOM, OR TWO OTHER PEOPLE IN THE ROOM.
Q. AND WHO - DESCRIBE THE PEOPLE WHO CAME IN TO SAY THAT THEY WERE GOING TO ARREST YOU?
A. IT WAS JUST ONE DEPUTY SHERIFF. HE HAD ON A BLUE COAT AND A SLACK PANTS, YOU KNOW. AND LIKE A DEPUTY. AND THE SECURITY GUARD WAS FROM DOWNSTAIRS. I THINK IT WAS LIKE A

BEIGE BROWN RUST COLOR UNIFORM THAT HE HAD ON. THE SECURITY GUARD.

Q. AND WHAT HAPPENED THEN? AFTER THEY TOLD YOU THEY WERE GOING TO ARREST YOU, WHAT HAPPENED?

A. OKAY. I ASKED THE MAN THAT READ ME MY RIGHTS, WHICH WAS THE DEPUTY, I ASKED HIM IF I COULD PLEASE PUT ON MY CLOTHES.

Q. WHAT DID YOU HAVE ON?

A. A HOSPITAL GOWN.

Q. PARDON?

A. THE HOSPITAL GOWN.

Q. DESCRIBE THE HOSPITAL GOWN?

A. IT SNAPS ON THE SHOULDERS AND TIES TO THE NECK AND THE BACK AND THE MIDDLE PART OF MY BACK.

* * *

[PAMELA PEAR 260]

A. IT WAS KIND OF SMALL. COMMODE THERE AND EVERYTHING WAS, LIKE THEY SAY, DIRTY. IT WAS VERY DIRTY. YOU WOULDN'T WANT TO USE IT. YOU HAVE NO PRIVACY. NOTHING CLEAN. THE BLANKET LOOK LIKE SOMEBODY ELSE DONE USED THE BLANKETS AND WIPED THEIR BACK SIDES WITH THEM OR WHATEVER. AND THEY LEAVE THEM THERE AND IT SMELLS BAD. AND THEY DIDN'T HAVE ANY COAT OR ANYTHING.

Q. HOW DID YOU FEEL WHEN YOU WERE IN THE -- IN THAT CELL?

A. WELL, I WAS REAL COLD. I WAS REAL NERVOUS. I AIN'T NEVER BEEN IN JAIL BEFORE. I WAS TRYING TO STICK MY HEAD BETWEEN THE BAR SO I COULD BREATH BECAUSE I COULDN'T BREATH. CLAUSTROPHOBIA. AND WHILE I SIT ON THE BED AND I KEEP FEELING MY STOMACH HURTING AGAIN, AND I BEAT ON THE BAR AND I ASKED THE MATRON TO CALL AMBULANCE BECAUSE I'M BACK IN PAIN AGAIN. AND SO SHE CALLED THE AMBULANCE AND THEY TOOK ME BACK TO THE HOSPITAL AND I WAS IN LABOR AGAIN.

Q. WHO TOOK YOU BACK TO THE HOSPITAL?

A. AN AMBULANCE CAME AND PICK ME UP FROM THE JAIL.

Q. DID YOU HAVE ANY HANDCUFFS OR ANYTHING ON WHEN YOU WERE TRANSPORTED?

A. YES.

Q. WHEN THEY TOOK YOU BACK TO THE HOSPITAL, WHERE DID THEY TAKE YOU BACK?

A. BACK IN LABOR AND DELIVERY.

Q. AT WHICH HOSPITAL?

* * *

[PAMELA PEAR 262]

A. WHEN I WAS DISCHARGE I WENT BACK AND LIVE WITH MY UNCLE. I WENT HOME. AT THE TIME I WAS IN MY HOME.

Q. AT THE TIME WHEN YOU WERE TRANSPORTED TO THE JAIL, WERE

YOU OFFERED ANY SUBSTANCE ABUSE TREATMENT AROUND THAT TIME?
A. YES.
Q. AND WHEN DID YOU GET AN OFFER OF SUBSTANCE ABUSE TREATMENT IN CONNECTION WITH THE ACTUAL ARREST?
A. IT WAS AFTER.
Q. PARDON?
A. IT WAS AFTER I GOT OUT OF JAIL. I BELIEVE IT WAS AFTER I GOT OUT OF JAIL.
Q. AND FROM WHOM DID YOU GET THAT INFORMATION?
A. I THINK IT WAS A LETTER THAT CAME SAYING THAT I HAD TO GO TO SUBSTANCE ABUSE AND BECAUSE I DIDN'T GO BACK TO THE HOSPITAL OR ANYTHING.
Q. PARDON?
A. I DIDN'T HAVE ANOTHER APPOINTMENT OR ANYTHING TO GO BACK TO THE DOCTOR, SO I THINK IT WAS A LETTER THAT CAME IN THE MAIL, IF I'M NOT MISTAKEN, TO GO TO CHARLESTON COUNTY SUBSTANCE ABUSE, BUT I DIDN'T FEEL COMFORTABLE WITH IT BECAUSE OF THE PEOPLE AROUND ME, THEY WERE CHEATING IN THE PROGRAM. EVEN THOUGH I KNEW I WAS SUPPOSED TO BE GOING FOR MYSELF, I READ -- I CAN'T SEE MYSELF BEING IN A PROGRAM IF I CAN'T BE HONEST. AND YOU GOT TO BE HONEST IN THE PROGRAM. YOU GOT TO. THAT'S THE ONLY WAY THAT YOU CAN GET THROUGH.

[PAMELA PEAR 263]

Q. MS. PEAR, DO YOU CONTINUE TO HAVE ANY FEELINGS ABOUT THE ARREST AND THE EVENTS SURROUNDING THE ARREST?
A. YEAH.
Q. WHAT ARE THEY?
A. I WAS SCARED, AND I DIDN'T KNOW WHAT WAS GOING TO HAPPEN. SO - IT'S ON MY RECORD FOR THE REST OF MY LIFE. AND I WORRY ABOUT THAT BECAUSE I DON'T KNOW IF IT CAN STOP ME FROM GETTING A JOB OR WHATEVER. SOME PEOPLE DON'T HIRE YOU WHEN YOU GOT A RECORD LIKE THAT.
Q. MS. PEAR, PRIOR TO YOUR ARREST, WERE YOU REFERRED TO SUBSTANCE ABUSE TREATMENT BY ANY OF THE PERSONNEL AT THE MEDICAL UNIVERSITY?
THE COURT: REPHRASE THE QUESTION. DON'T USE THE WORD PRIOR.
MS. DUNN: OKAY.
Q. (BY MS. DUNN, CONTINUING) BEFORE, BEFORE YOU WERE ARRESTED, WERE YOU REFERRED FOR SUBSTANCE ABUSE TREATMENT BY ANYONE WORKING AT THE MEDICAL UNIVERSITY?
A. YES.
Q. WHEN DID THAT HAPPEN?
A. THE SECOND TIME THAT I WENT IN THE HOSPITAL BEFORE I GOT LOCKED UP.
Q. OKAY. DID YOU KEEP YOUR APPOINTMENT?

A. I DON'T THINK THAT I WENT. IT TOOK ME AWHILE BEFORE I
WENT THERE. I GUESS I DIDN'T WANT TO ACCEPT THE FACT, BUT

[PAMELA PEAR 264]

THEN I DID MAKE UP MY MIND TO GO TO COUNTY SUBSTANCE ABUSE.
Q. I DON'T UNDERSTAND WHAT YOU MEAN BY DIDN'T WANT TO ACCEPT
THE FACTS?
A. I REALLY DIDN'T WANT TO GO BECAUSE I DIDN'T FEEL LIKE I
HAD A PROBLEM AT THAT TIME.
Q. WELL, DID YOU GO?
A. I DID GO. I WAITED AWHILE, A COUPLE OF WEEKS OR
WHATEVER, THEN I WENT TO CHARLESTON COUNTY SUBSTANCE ABUSE
BECAUSE I DIDN'T KNOW WHAT MY OUTCOME WOULD HAVE BEEN.
Q. I'M SORRY. YOU DIDN'T KNOW WHAT?
A. AFTER I GOT OF JAIL I WENT TO CHARLESTON COUNTY SUBSTANCE
ABUSE AWHILE AFTERWARD. IT TOOK ME AWHILE BEFORE I GOT TO
GO.
Q. MS. PEAR, DO YOU KNOW WHAT YOU WERE ARRESTED FOR?
A. YEAH.
Q. WHAT?
A. DISTRIBUTION FOR A MINOR – DISTRIBUTION TO A MINOR.
MS. DUNN: BEG THE COURT'S INDULGENCE.
(PAUSE.)
MS. DUNN: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: CROSS-EXAMINATION.
MS. COMPANION: FIRST OF ALL I WOULD LIKE TO MOVE PLAINTIFF'S MEDICAL RECORDS, SUBSTANCE ABUSE RECORD AND ARREST RECORD INTO EVIDENCE.
MS. DUNN: THE PAMELA PEAR RECORDS ARE SUBJECT TO

[PAMELA PEAR 265]

THE SAME, BUT I HAVE ACTUALLY REVIEWED PART OF THESE. SEVERAL OF THESE MEDICAL UNIVERSITY HAVE NOTHING TO DO WITH ANY TREATMENT THAT IS CONNECTED WITH THIS POLICY.
THE COURT: WELL THE SAME RULE I MADE BEFORE I'M GOING TO MAKE IN REGARD TO ALL OF THE SUBSTANCE ABUSE RECORDS AND ALL OF THE HOSPITAL RECORDS.
MS. COMPANION: 86 FOR THE ARREST RECORD, 83 FOR THE SUBSTANCE ABUSE RECORD, AND 81 FOR THE MEDICAL RECORD.
DEPUTY CLERK: THANK YOU.
CROSS-EXAMINATION
BY MS. COMPANION:
Q. GOOD AFTERNOON, MS. PEAR.
A. GOOD AFTERNOON.
Q. YOU STARTED USING COCAINE AROUND AGE 21 OR 22, DIDN'T YOU?
A. YES.
Q. AND YOU ADMIT THAT YOU USED COCAINE DURING YOUR PREGNANCY

WITH THE CHILD THAT YOU JUST SPOKE ABOUT?
A. YES.
Q. AND YOU WERE AWARE THAT WHEN YOU WERE PREGNANT AND YOU WERE USING COCAINE, THAT DRUGS WERE BAD FOR YOUR BABY IN UTERO, WEREN'T YOU?
A. YES.
Q. AND IN FACT YOU KNEW THAT USING COCAINE WHILE YOU WERE PREGNANT COULD CAUSE YOU TO GO INTO EARLY LABOR, DIDN'T YOU?

[PAMELA PEAR 266]

A. YES.
Q. BUT YOU USED COCAINE DURING YOUR PREGNANCY ANYWAY, DIDN'T YOU?
A. YES.
Q. AND YOU WERE HAVING PROBLEMS WITH PRE-TERM LABOR DURING THAT PREGNANCY, WEREN'T YOU?
A. YES.
Q. IN FACT YOUR DOCTOR PUT YOU ON BEDREST WHEN YOU WERE ABOUT 33 WEEKS PREGNANT, DIDN'T HE?
A. YES.
Q. YOU DIDN'T STAY IN BED, DID YOU?
A. MOST OF THE TIME, YES.
Q. BUT IN FACT YOU CONTINUED TO GET OUT OF BED TO GO GET COCAINE TO USE, DIDN'T YOU?
A. I DIDN'T HAVE TO GO GET IT.
MS. COMPANION: MAY WE HAVE A SIDEBAR DISCUSSION?
THE COURT: YEAH, SURE.
(SIDEBAR AS FOLLOWS:)

MS. COMPANION: I HAVE, I'M GOING TO IMPEACH HER WITH THIS TESTIMONY. WITHIN THE DEPOSITION IT WOULD IMPEACH HER, IT TALKS ABOUT SELLING DRUGS. SHE GOT OUT OF BED 33 WEEKS PREGNANT TO GO SELL DRUGS. IMPEACH HER WITH HER DEPOSITION.

THE COURT: YOU ASKED HER THE QUESTION, YOU GOT OUT OF BED TO GO GET DRUGS. SHE SAID THAT SHE DIDN'T HAVE TO GET

* * *

[PAMELA PEAR 268]

A. YES.
Q. AND YOU SIGNED CONSENT FORMS FOR YOUR TREATMENT AT THE MEDICAL UNIVERSITY, DIDN'T YOU?
A. YES.
Q. IS THIS YOUR SIGNATURE?
A. UMM-HMM.
Q. AND IS THIS YOUR SIGNATURE?
A. YES.
Q. AND IS THIS YOUR SIGNATURE?
A. YES.
Q. AND IS THIS YOUR SIGNATURE HERE?
A. YES.

MS. COMPANION: I WOULD LIKE TO MOVE 81, B, C, D AND E INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MS. DUNN: NO, YOUR HONOR.

DEPUTY CLERK: THAT'S DEFENDANTS' EXHIBIT 81.

MS. COMPANION: B, C, D AND E.

Q. (BY MS. COMPANION, CONTINUING) MS. PEAR, YOU AGREE THAT YOU SAW A VIDEO REGARDING THE DANGERS OF SUBSTANCE ABUSE AND DRINKING AND SMOKING AND USING DRUGS DURING YOUR PREGNANCY AT THE MEDICAL UNIVERSITY?
A. YES.
Q. AND YOU SIGNED A LETTER ACKNOWLEDGING THAT YOU HAD SEEN THAT VIDEO, DIDN'T YOU?

[PAMELA PEAR 269]

A. YES.
Q. IS THAT YOUR SIGNATURE?
A. YES.
Q. I WOULD LIKE TO MOVE DEFENDANTS' EXHIBIT NUMBER 88 INTO EVIDENCE?
MS. DUNN: WITHOUT OBJECTION.
DEPUTY CLERK: THANK YOU.
Q. (BY MS. DUNN, CONTINUING) AND YOU ALSO AGREE THAT WHEN YOU WERE AT THE MEDICAL UNIVERSITY YOU SIGNED THE LETTER FROM THE SOLICITOR'S OFFICE INFORMING YOU THAT YOU NEEDED TO GO TO SUBSTANCE ABUSE TREATMENT SINCE YOU WERE PREGNANT AND USING DRUGS, AND IF YOU DIDN'T THAT YOU COULD BE ARRESTED; ISN'T THAT TRUE?
A. YES.
Q. AND IS THIS YOUR SIGNATURE?
A. YES.
MS. COMPANION: I WOULD LIKE TO MOVE DEFENDANTS'

EXHIBIT 87 INTO EVIDENCE.
THE COURT: WITHOUT OBJECTION.
MS. DUNN: WITHOUT OBJECTION.
Q. (BY MS. COMPANION, CONTINUING) MS. PEAR, YOU AGREE THAT SOMEONE AT THE MEDICAL UNIVERSITY HELPED MAKE AN APPOINTMENT FOR YOU AT THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION TO RECEIVE SUBSTANCE ABUSE TREATMENT WHILE YOU WERE PREGNANT; ISN'T THAT TRUE?

[PAMELA PEAR 270]

A. YES.
Q. AND THAT PERSON WHO HELPED YOU MAKE THAT SUBSTANCE ABUSE APPOINTMENT WAS NOT SHIRLEY BROWN, WAS IT?
A. I DON'T KNOW WHO IT WAS.
Q. BUT IT WASN'T SHIRLEY BROWN, WAS IT?
A. I DON'T KNOW.
Q. IS THAT YOUR SIGNATURE?
A. UMM-HMM.
MS. COMPANION: I WOULD LIKE TO MOVE DEFENDANTS' EXHIBIT NUMBER 91 INTO EVIDENCE.
MS. DUNN: WITHOUT OBJECTION.
DEPUTY CLERK: DEFENDANTS' EXHIBIT 91 IN EVIDENCE.
Q. (BY MS. COMPANION, CONTINUING) AND YOU AGREE THAT YOU DIDN'T HAVE ANY PROBLEMS WITH CHILDCARE AT THE TIME THAT YOU

WERE SUPPOSED TO BE ATTENDING SUBSTANCE ABUSE TREATMENT AT CHARLESTON COUNTY SUBSTANCE ABUSE, DID YOU?
A. NO, I DIDN'T.
Q. AND YOU AGREED THAT YOU DID NOT HAVE ANY DIFFICULTIES WITH TRANSPORTATION WITH THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION, DID YOU?
A. NO, I DIDN'T.
Q. AND YOU ATTENDED CHARLESTON COUNTY SUBSTANCE ABUSE FOR A LITTLE WHILE, DIDN'T YOU?
A. YES, I DID.
Q. YOU DIDN'T STAY WITH THE PROGRAM, DID YOU?

[]PAMELA PEAR 271]

A. NO, I DIDN'T.
Q. AND YOU AGREE THAT YOU CONTINUED TO USE COCAINE AT THAT TIME?
A. YES, I DID.
Q. AND YOU ALSO AGREE THAT YOU WERE ARRESTED DURING YOUR PREGNANCY?
A. YES.
Q. AND DURING THE PREGNANCY, THIS PREGNANCY WE HAVE BEEN DISCUSSING TODAY, BEFORE GOING TO MUSC FOR YOUR PRENATAL CARE YOU WERE AWARE THAT MUSC WAS TESTING PREGNANT WOMEN FOR ILLEGAL DRUGS, WEREN'T YOU?
A. YES.
Q. AND WHILE YOU WERE PREGNANT AND BEFORE YOU EVEN WENT TO

MUSC FOR PRENATAL CARE, YOU WERE AWARE THERE WAS A POLICY REGARDING ARRESTING WOMEN IF YOU USED ILLEGAL DRUGS DURING YOUR PREGNANCY?

A. YES.

Q. BUT YOU WENT TO MUSC FOR YOUR PRENATAL CARE?

A. I WAS REFERRED THERE BY FRANKLIN C. FETTER.

Q. YOU DIDN'T TRY TO GO ANYPLACE ELSE, DID YOU?

A. WHY SHOULD I IF I WAS REFERRED THERE.

Q. PLEASE ANSWER THE QUESTION.

A. NO, I DIDN'T.

Q. AND ISN'T IT TRUE THAT THIS ARREST FOR DISTRIBUTION TO A MINOR WAS NOT THE FIRST TIME THAT YOU HAD EVER BEEN

[PAMELA PEAR 272]

ARRESTED?

A. NO. NO, IT'S NOT THE FIRST TIME I HAVE BEEN ARRESTED.

Q. AND AFTER YOUR ARREST FOR DISTRIBUTION YOU WERE ARRESTED ANOTHER TIME AND SPENT THE NIGHT IN JAIL; ISN'T THAT TRUE?

A. YES.

Q. AND WHILE YOU WERE USING COCAINE AND WERE PREGNANT YOU KNEW IT WAS ILLEGAL TO POSSESS AND DISTRIBUTE COCAINE, DIDN'T YOU?

A. CAN YOU REPEAT THE QUESTION?

Q. WHEN YOU WERE USING COCAINE WHILE YOU WERE PREGNANT, YOU

WERE AWARE THAT IT WAS ILLEGAL TO POSSESS AND TO DISTRIBUTE COCAINE, DIDN'T YOU?

A. YES.

Q. AND YOU AGREE THAT THE ONLY ILLEGAL DRUG THAT YOU USED DURING YOUR PREGNANCY WAS COCAINE; ISN'T THAT TRUE?

A. YES.

Q. AND. ISN'T IT TRUE THAT YOU DO NOT USE COCAINE ANYMORE?

A. NO, I DON'T.

Q. AND YOU HAVE NOT USED IT IN YEARS, HAVE YOU?

A. IT'S BEEN AWHILE.

Q. CONGRATULATIONS.

MS. COMPANION: ONE MOMENT, PLEASE.

Q. (BY MS. COMPANION, CONTINUING)YOUR ARREST - YOUR ARREST BEFORE YOUR PREGNANCY AND AFTER THE PREGNANCY; THEY WEREN'T DUE TO THE POLICY, WERE THEY?

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF CLAUDIA PEOPLES

[PEOPLES 603]

Q. TELL US WHERE YOU'RE FROM, PLEASE?
A. BARNWELL, SOUTH CAROLINA.
Q. AND WHAT IS YOUR HUSBAND'S NAME?
A. RODNEY.
Q. AND YOU - AND WHAT DOES RODNEY DO FOR A LIVING?
A. HE IS A CIRCUIT JUDGE FOR THE STATE OF SOUTH CAROLINA.
Q. AND JUDGE PEOPLES HAS BEEN A JUDGE FOR HOW LONG?
A. SINCE 1974.
Q. AND DO YOU WORK OUTSIDE OF THE HOME, MS. PEOPLES?
A. I'M A HOMEMAKER, BUT ALSO THE EXECUTIVE DIRECTOR PART-TIME FOR THE BARNWELL COUNTY UNITED WAY.
Q. AND DO YOU ALSO SERVE ON THE BOARD OF TRUSTEES OF THE MEDICAL UNIVERSITY?
A. YES, I DO.
Q. HOW DID YOU OBTAIN YOUR BOARD SEAT?
A. I WAS APPOINTED BY THE GOVERNOR.
Q. HOW LONG HAVE YOU BEEN ON THE BOARD OF THE MEDICAL UNIVERSITY?

A. SINCE 1988.
Q. AND IN YOUR CAPACITY AS A BOARD MEMBER AND IN THIS CASE YOU ARE A NAMED DEFENDANT, AS YOU KNOW, HAVE THE SPECIFIC SEQUENCE OF EVENTS THAT LED UP TO THE APPROVAL AND IMPLEMENTATION OF THIS INTERAGENCY POLICY BEEN THE SAME AS THEY HAVE FOR OTHER POLICIES THAT YOU HAVE SEEN ADOPTED AND APPROVED BY THE BOARD?

[PEOPLES 604]

A. YES, THEY HAD.
Q. WERE THERE ANY DEPARTURES FROM THE NORMAL PROCEDURES AND SEQUENCE OF EVENTS IN THE ADOPTION OF THIS POLICY AT THE MEDICAL UNIVERSITY?
A. NONE AT ALL.
Q. HAS THE MEDICAL UNIVERSITY, IN YOUR YEARS AS A BOARD MEMBER, COMPLIED WITH MANDATORY REPORTING OF SUSPECTED CHILD ABUSE?
A. AS FAR AS I KNOW.
Q. IS THIS POLICY, THIS INTERAGENCY POLICY, CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS, STANDARDS AND PHILOSOPHY?
A. YES.
Q. AS YOU UNDERSTOOD IT AS A LAY PERSON, NOT A MEDICAL MEMBER OF THE BOARD OF TRUSTEES, WHAT WAS THE GOAL OF THIS POLICY, MS. PEOPLES?

A. THE GOAL WAS TO PROTECT THESE UNBORN CHILDREN AND ALSO TO GET THE MOTHERS OFF OF DRUGS IF THEY WOULD AGREE.

Q. AND WAS THERE ANY INTENT TO DISCRIMINATE AGAINST BLACK MOTHERS?

A. NONE.

MR. HOOD: MS. PEOPLES, THANK YOU FOR COMING TODAY.

CROSS-EXAMINATION

BY MR. WHERRY:

Q. NOW MR. HOOD ASKED YOU WHETHER YOU WERE A NAMED DEFENDANT. HE HAS ASKED THE OTHER TRUSTEES. YOU UNDERSTAND

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF WILLIAM PITTARD

[PITTARD 208]

A. YES.
Q. AND THEN YOU WENT TO THE UNIVERSITY OF VIRGINIA MEDICAL SCHOOL. AND YOU ARE CURRENTLY A PROFESSOR OF PEDIATRICS, CORRECT?
A. YES.
Q. AND YOU ARE THE HEAD OF THE DEPARTMENT OF THE DEPARTMENT OF PEDIATRICS AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. WELL, I'M THE DIRECTOR OF THE DIVISION OF NEONATOLOGY, NOT THE CHAIRMAN OF THE DEPARTMENT OF PEDIATRICS.
Q. WE HAVE HEARD FROM DR. ANNIBALE AND DR. PATRICK AND DR. HULSEY. YOU'RE THEIR BOSS; IS THAT RIGHT?
A. I DON'T REFER TO IT THAT WAY, BUT YES.
Q. OKAY. OKAY. AND, DOCTOR, WHEN YOU WERE AT WAKE FOREST IN 1968, WHERE YOU AWARDED PHI BETTA KAPPA?
A. YES.
Q. AND HAVE YOU RECEIVED OTHER AWARDS?

A. I AM NOT SURE WHAT SPECIFIC AWARD YOU MIGHT BE THINKING ABOUT, BUT PERIODICALLY.
Q. I'M SORRY.
A. PERIODICALLY THERE WERE SOME.
Q. 1993 WERE YOU LISTED IN THE BEST DOCTORS IN AMERICA?
A. YES
Q. YOU HAVE HAD NUMEROUS PUBLICATIONS AND PEER REVIEW LITERATURE; IS THAT RIGHT?
A. YES, SIR.

[PITTARD 209]

Q. I HAVE GOT THE BENEFIT OF YOUR CURRICULUM VITAE IN FRONT OF ME AND IT IS SOME 20 PAGES LONG. IS THAT AN ACCURATE LISTING OF ALL OF THE PUBLICATIONS YOU HAVE IN THE LITERATURE, DOCTOR?
A. I'M ASSUMING THIS IS AN UPDATED CV.
Q. JUST TAKE A LOOK AT IT FOR A MINUTE.
A. THERE IS - THERE SHOULD BE A LITTLE OVER A HUNDRED PUBLICATIONS.
Q. A HUNDRED PUBLICATIONS?
A. YES, ALTOGETHER.
Q. AND CHAPTERS AND BOOKS AS WELL?
A. YES.
Q. DOCTOR, ARE YOU FAMILIAR WITH WHAT HAS BECOME KNOWN AS THE INTERAGENCY POLICY?
A. YES, I AM.
Q. WERE YOU INVOLVED IN THE INITIAL MEETINGS WHEN THE

INTERAGENCY POLICY WAS DEVELOPED?
A. YES, I WAS.
Q. WHY WAS PEDIATRICS INVOLVED IN THE DEVELOPMENTAL MEETINGS OF THE INTERAGENCY POLICY?
A. PEDIATRICS I GUESS TO MOST PEOPLE
THE COURT: ARE YOU HAVING ANY PROBLEM HEARING HIM DOWN THERE ON THE END?
JURY: JUST A LITTLE BIT.
THE COURT: WE HAVE BEEN HAVING TROUBLE WITH THAT

[PITTARD 210]

BUT IT MAY WORK FOR YOU.
A. PEDIATRICS IS A SPECIALTY WHICH CLEARLY LOOKS AT THE GROWTH AND DEVELOPMENT OF CHILDREN. BUT A MAJOR COMPONENT PEDIATRICS IS EDUCATION AND PREVENTATIVE MEDICINE. AND A MAJOR ROLE OF ANY PEDIATRICIAN IS TO FACILITATE THE CARE OF CHILDREN VIA THE PARENTS PRIMARILY. SUCH THAT THE CHILD WILL GROW AND DEVELOP INTO A HEALTHY, PRODUCTIVE MEMBER OF OUR SOCIETY.
AND WHEN THIS INTERAGENCY POLICY WAS BEING PUT TOGETHER, IT WAS VERY APPARENT THAT CHILDREN WHO ARE EXPOSED TO VARIOUS DRUGS, TO ALMOST ANY KIND OF ENVIRONMENTAL FACTOR YOU MIGHT THINK OF, THAT CAUSES HARM TO THEIR DEVELOPMENT WOULD BE SOMETHING THAT ANY PEDIATRICIAN WOULD LIKE TO LIMIT.

AND AS A MATTER OF FACT IN THIS PARTICULAR CASE, WE HAPPEN TO BE TALKING ABOUT A SPECIFIC DRUG, WE'RE TALKING ABOUT COCAINE. AND THERE WAS MORE THAN A SMALL AMOUNT OF DATA SUGGESTING THAT BABIES IN UTERO EXPOSED TO COCAINE DEVELOPED ABNORMALLY. AND THEREFORE IT WAS VERY EASY FOR ME TO SAY WHEN THE QUESTION AROSE, HOW CAN WE DO SOMETHING ABOUT THIS.

AND WE TRIED TO GET A GROUP TOGETHER TO SAY HOW IS THE BEST WAY TO LIMIT THIS EXPOSURE, THAT THE - I WANTED TO BE A PART OF THAT PROCESS. IT WAS ALMOST ENTIRELY, IF THE IDEA IS WE COULDN'T, AS I RECALL, WE COULDN'T DO ANYTHING ABOUT A CHILD WHO HAS ALREADY BEEN EXPOSED AND INJURED, BUT IF WE COULD FACILITATE GETTING A MOTHER WHO USES COCAINE IN SOME

[PITTARD 211]

FORM OF REHABILITATION, THEN CONCEIVABLY SUBSEQUENT CHILDREN THAT THIS LADY MIGHT HAVE WOULD BE LESS LIKELY TO BE EXPOSED AND THEREFORE MORE LIKELY TO DEVELOP NORMALLY.

AND PRETTY MUCH I THINK THAT WAS THE GIST OF EVERYONE AROUND THE GROUP THAT WAS TRYING TO COME UP WITH A WAY OF SUPPORTING THESE CHILDREN.

Q. AND WHAT WAS, AS YOU UNDERSTOOD IT, THE GOAL OF THE INTERAGENCY POLICY, DOCTOR?
A. WELL, YOU KNOW, TO TRY TO TELL YOU EXACTLY WHAT THE GOAL IS SEVERAL YEARS LATER IS NOT ALTOGETHER CLEAR TO ME. BUT THE GOAL FOR ME PER SE, AND I THINK MOST OF THE PEOPLE, WAS HOW CAN WE FACILITATE A BENEFICIAL OUTCOME TO A CIRCUMSTANCE WHICH IS NOT PARTICULARLY GOOD RIGHT NOW, I.E. THE MOTHER IS CLEARLY ADDICTED, SHE WOULDN'T BE USING THE DRUG IF SHE WEREN'T, AND HOW CAN WE FACILITATE HER WELL-BEING BY GETTING HER OUT OF THIS ADDICTIVE CIRCUMSTANCES WHICH WOULD THEN SUBSEQUENTLY BENEFIT THE BABY. IF NOT THE CURRENT BABY, THEN ANY SUBSEQUENT PREGNANCIES THIS MOTHER MIGHT HAVE.
AND SO PREVENTION WAS PERHAPS THE MOST OBVIOUS OBJECTIVE.
Q. DOCTOR, THE DEVELOPMENTAL MEETINGS THAT YOU ATTENDED, DO YOU RECALL A SOCIAL WORKER BY THE NAME OF MARTHA WILLIAMS BEING PRESENT?
A. SHE WAS A SOCIAL WORKER IN THE NICU.
Q. I'M SORRY?

* * *

[PITTARD 213]

THAT DEVELOPED THE INTERAGENCY POLICY OR DISCUSSED ITS IMPLEMENTATION?

A. RACIAL SLURS WEREN'T A PART OF THE MEETING.

Q. WERE YOU AWARE OF ANY RACIAL MOTIVATION BEHIND THIS POLICY?

A. THE POLICY WAS ALMOST ENTIRELY AN EFFORT TO KEEP THE MOTHERS AND BABIES TOGETHER AND TO PREVENT SUBSEQUENT INJURY TO FUTURE PREGNANCIES AND PERHAPS LIMIT SOME OF THE INJURY TO THE CURRENT PREGNANCY. I DON'T THINK THERE WAS ANY - THIS WAS INTENDED FOR ANY PREGNANT WOMEN. I'M NOT SURE WHY YOU WOULD THINK IT WOULD BE RACIAL.

Q. I DON'T, DOCTOR, DON'T WORRY.

MR. WHERRY: I OBJECT.

THE COURT: OBJECTION SUSTAINED. LADIES AND GENTLEMEN, PLEASE DISREGARD THE COMMENTS BY THE ATTORNEY. IT'S IMPROPER FOR HER TO EXPRESS A COMMENT ON THE EVIDENCE.

MS. SHOWERS: I APOLOGIZE, YOUR HONOR.

THE COURT: IT'S ALL RIGHT.

Q. (BY MS. SHOWERS, CONTINUING) DID YOU EVER HEAR SHIRLEY BROWN MAKE RACIST STATEMENTS?

A. NO.

Q. DOCTOR, AS A PEDIATRICIAN, DID YOU HAVE OCCASION TO TEST BABIES UNDER THE INTERAGENCY POLICY?

A. YES, WE DID.

Q. WHAT TRIGGERED ARREST, DOCTOR?

* * *

[PITTARD 216]

TESTIFYING FROM.

MS. SHOWERS: OKAY.

Q. (BY MS. SHOWERS, CONTINUING) DOCTOR, DO YOU RECALL THE CRITERIA UPON WHICH THE TESTS WERE DONE, THE URINE DRUG SCREENS?

A. WELL, AS I SORT OF INDICATED THERE WERE SEVEN OR EIGHT CRITERIA. I'LL BE HARD PRESSED TO COME UP WITH EACH ONE OF THEM. I CAN TELL YOU THAT THE ONES THAT COME TO MIND WERE PREMATURE LABOR IS STIMULATED BY THE USE OF COCAINE. THEREFORE WOMEN WHO ARE PREGNANT AND USE COCAINE DURING THE PREGNANCY ARE MUCH MORE LIKELY TO PRESENT WITH THE EARLY ONSET OF LABOR. I.E. THEY WILL DELIVER PREMATURELY. SIMILARLY, UTERINE CONTRACTIONS WILL RESULT IN ABRUPTION OF THE PLACENTA. SO FREQUENTLY WHEN WOMEN PRESENT WITH ABRUPTIO PLACENTAE, THEY MAY BE WOMEN WHO HAVE BEEN USING COCAINE. WOMEN WHO TELL ME THAT THEY USE COCAINE, MAY BE WOMEN WHO WERE USING COCAINE. AND BELIEVE IT OR NOT THERE ARE PATIENTS THAT COME IN AND SAY THEY USE COCAINE.

ON THE OTHER HAND, THERE ARE A SERIES OF SIX OR

SEVEN THINGS WHICH WE USED AS A MARKERS FOR WOMEN WHO MIGHT BE USING COCAINE. AND THEREFORE MIGHT HAVE A CHILD WITH CERTAIN ABNORMALITIES. IF A CHILD HAD ONE OF THOSE ABNORMALITIES, WE MIGHT LOOK FOR DRUG ABUSE OR SCREEN THAT CHILD FOR THE SAME REASON. IT WAS - THESE CRITERIA WERE WRITTEN DOWN IN BLACK AND WHITE. FOR THAT MATTER THEY MAY HAVE EVEN BEEN POSTED, I

[PITTARD 217]

DON'T KNOW. BUT THEY WERE WRITTEN DOWN VERY CLEARLY SO ALL OF THE HOSPITAL PERSONNEL KNEW, I MEAN THE NURSES AND PHYSICIANS THAT WERE CARING FOR THE PATIENTS KNEW WHAT THESE CRITERIA WERE. IF ANY WOMEN HAD ONE OF THESE CRITERIA, THEY WERE CLEARLY SCREENED.

I DON'T KNOW IF THAT ANSWERS YOUR QUESTION.

Q. YES, SIR. THANK YOU. YOU WERE INVOLVED IN TESTING OF THE NEWBORNS; IS THAT RIGHT?

A. YES. I WASN'T CARING FOR THE MOTHERS. I TOOK CARE OF THE BABIES.

Q. COULD YOU DESCRIBE TO THE JURY THE MEDICAL NECESSITY OF WHY THIS WAS DONE? WHY THE TEST WAS PERFORMED?

A. WHY IS IT PERFORMED? IT'S SORT OF LIKE MANY OF THE TESTS

THAT YOU HAVE WHEN YOU GO TO YOUR PHYSICIAN FOR ANY PARTICULAR PROBLEM, THERE IS, FOR INSTANCE IN A CHILD WHO IS BEEN EXPOSED TO COCAINE IN UTERO, ONE OF THE MANY THINGS THAT YOU MIGHT SEE IS THE CHILD COULD BE UNDERGROWN OR HE COULD BE JUST NOT FEEDING VERY WELL. AND IN FACT THEY'RE VERY IRRITABLE ON OCCASION. ALL CHILDREN WHO ARE VERY IRRITABLE ARE NOT EXPOSED TO COCAINE AND ALL CHILDREN WHO ARE EXPOSED TO COCAINE ARE NOT VERY IRRITABLE. SO IT'S A MATTER, YOU LOOK AT THE SERIES OF CLINICAL SYMPTOMS THE CHILD PRESENTS WITH AND THEN YOU SAY WHAT IS THE - WHAT IS THE DIFFERENTIAL DIAGNOSIS.

IN OTHER WORDS, WHAT ARE THE POSSIBILITIES THAT MIGHT EXPLAIN WHY THIS CHILD IS ACTING THE WAY HE OR SHE IS

[PITTARD 218]

ACTING. WE'RE LOOKING AT A BABY THAT IS DOING SOMETHING ABNORMAL, OF COURSE. AND WITH THAT IN MIND, YOU MAY NARROW IT DOWN TO A SERIES OF LET'S SAY SIX OR SEVEN CRITERIA, NOT UNLIKE TRYING TO FIGURE OUT WHAT IS WRONG WITH YOUR AUTOMOBILE IF THERE IS SOMETHING WRONG WITH IT AND THERE ARE SEVERAL THINGS THAT IT MIGHT BE, AND THEN YOU SAY THIS IS THE MOST

LIKELY OR THESE ARE THE MOST LIKELY. AND THEN TRYING TO FIGURE OUT WHICH ONE OF THOSE SIX OR SEVEN POSSIBILITIES MIGHT BE CAUSING THIS CHILD TO ACT THIS WAY.

AND WITH THAT IN MIND, WOULD BE OF THE STUDIES YOU MIGHT DO, WOULD BE A URINE DRUG SCREEN SAYING THIS COULD BE EXPLAINED BY BEING EXPOSED TO DRUGS IN UTERO. WITH AN UNDERSTANDING OF WHAT IS WRONG, WE CAN THEN MUCH BETTER DEAL WITH HOW TO CORRECT IT.

Q. DOCTOR, WERE ONLY BLACK BABIES TESTED UNDER THE POLICY OR DID IT APPLY -

MR. WHERRY: OBJECT TO THE LEADING NATURE OF THE QUESTION.

MS. SHOWERS: I HADN'T COMPLETED MY QUESTION.

THE COURT: THE FORM OF THE QUESTION IS LEADING FROM THE VERY BEGINNING.

Q. (BY MS. SHOWERS, CONTINUING) WHAT BABIES WERE TESTED UNDER THE POLICY, DOCTOR?

A. WELL THE BABIES AND MOTHERS BOTH WERE TESTED IF THE MOTHER PRESENTED OR BABIES PRESENTED WITH ANY OF THAT

[PITTARD 219]

OF SIX OR SEVEN CRITERIA. IT HAD NOTHING TO DO - IT HAD ABSOLUTELY NOTHING, THEY COULD BE ANYTHING, AND IF YOU GOT ONE

OF THOSE CRITERIA, THEY GET SCREENED. I'M NOT SURE WHY YOU KEEP COMING BACK TO WHAT COLOR OF THE MOTHER.

MR. WHERRY: I OBJECT TO THAT, YOUR HONOR. ASK THAT BE STRICKEN.

THE COURT: I OVERRULE THE OBJECTION.

MS. SHOWERS: CAN I HAVE A MOMENT, YOUR HONOR.

THE WITNESS: WHY SHE ASKED ME THAT.

THE COURT: SAY WHAT?

THE WITNESS: WHY SHE ASKED ME THAT.

MS. SHOWERS: NOTHING FURTHER.

THE WITNESS: CAN I LEAVE?

THE COURT: NO, NO, WE HAVE CROSS-EXAMINATION.

CROSS-EXAMINATION

BY MR. WHERRY:

Q. DOCTOR, YOU SAID THAT ONE OF THE THINGS THAT YOU WERE CONCERNED ABOUT WAS EXPOSURE OF THESE BABIES TO ANYTHING THAT WOULD CAUSE THEM HARM; IS THAT FAIR?

A. I THINK THAT THAT IS A REASONABLE CONCERN, YES.

Q. AND, DOCTOR, EXPOSURE OF THESE BABIES TO ALCOHOL AND TOBACCO CERTAINLY HAVE GREAT POTENTIAL FOR CAUSING HARM, DIDN'T THEY?

A. I THINK EXPOSURE TO A NUMBER OF CRITERIA CERTAINLY, INCLUDING NICOTINE AND EHTYL ALCOHOL AND ANY OF THE VARIETY OF

[PITTARD 220]

DRUGS SUCH AS COCAINE HAVE AN - COULD HAVE AN ADVERSE EFFECT,
SURE.
Q. THIS INTERAGENCY POLICY, DOCTOR, WAS LIMITED TO COCAINE,
WASN'T IT?
A. THIS PARTICULAR POLICY WAS RELATED TO COCAINE, YES.
Q. DOCTOR, EXPOSURE OF THE FETUS TO HEROIN, AND
AMPHETAMINES, BARBITURATES AND OTHER SIMILAR SUBSTANCES HAS
THE POTENTIAL FOR CAUSING HARM TO THE FETUS, DOESN'T IT?
A. I WOULD ASSUME THAT ALL OF THOSE DRUGS HAVE - COULD HAVE
AN ADVERSE AFFECT.
Q. YOU ASSUME, DOCTOR, OR YOU KNOW AS A PEDIATRICIAN?
A. I'M QUITE SATISFIED THAT ALL OF THOSE DRUGS COULD CAUSE
AN ADVERSE EFFECT ON THE BABY, IF THAT'S WHAT YOU'RE ASKING
ME.
Q. YOU TALKED A LITTLE BIT ABOUT THE DEVELOPMENT OF THE
POLICY, DOCTOR. IN FACT, THE IDEA FOR THIS POLICY CAME FROM
SHIRLEY BROWN, DIDN'T IT?
A. I'M SORRY, I DON'T KNOW THE ANSWER TO THAT QUESTION. IT
CAME AT A TIME WHEN THERE WAS AN INCREASING AWARENESS OF THE
USE OF COCAINE IN OUR SOCIETY AND PARTICULARLY IN OUR

HERE IN CHARLESTON. AND IT WAS REALLY A MULTIGROUP CONCERN. CERTAINLY THAT'S WHY THE COMMITTEE THAT CAME UP WITH THIS POLICY WAS MADE UP OF OBSTETRICIANS AND PEDIATRICIANS AND PSYCHIATRISTS, AND EVEN THE SOLICITOR.

Q. SO I TAKE IT THE ANSWER TO MY QUESTION IS: YOU DON'T

* * *

[PITTARD 232]

A. THAT'S THE POINT.

Q. DOCTOR, IF A CHILD, A NEWBORN TESTS POSITIVE FOR COCAINE, THROUGH A URINE DRUG SCREEN, THERE IS NO PARTICULAR TREATMENT FOR THAT CHILD, IS THERE?

A. THAT'S CORRECT.

Q. DOCTOR, YOU AGREE WITH ME THAT ADDICTION IS A DISEASE, ISN'T IT, RATHER THAN - WELL, YOU WOULD AGREE WITH ME THAT THAT IS TRUE?

A. WHAT AM I AGREEING TO?

Q. THAT ADDICTION IS A DISEASE?

A. SOME PSYCHIATRISTS WOULD CALL IT THAT.

Q. WHAT DO YOU CALL IT?

A. I'M NOT GOING TO PLAY THAT GAME. I DON'T KNOW HOW YOU WOULD DEFINE DISEASE. ON THE OTHER HAND ADDICTION IS CERTAINLY SOMETHING THAT IS VERY PROBLEMATIC.

Q. WHAT DO YOU CALL IT?

A. ME? ADDICTION?

Q. YES.

A. I CALL IT A VERY DIFFICULT CONCERN. IT'S SORT OF LIKE YOU MENTION SMOKING AND ALCOHOL AND DRUGS, THEY'RE DRUGS THAT CAUSE ELICIT BEHAVIOR AND ALSO ABERRANT HEALTH PROBLEMS.
Q. ILLICIT BEHAVIOR, ALCOHOL AND TOBACCO?
A. DO YOU NOT AGREE WITH THAT?
Q. PARDON ME?
A. DO YOU NOT AGREE WITH THAT?

[PITTARD 233]

Q. I'M NOT ALLOWED TO TAKE A POSITION AGREEING OR NOT, DOCTOR, MY ROLE IS TO QUESTION THE WITNESS IN A COURTROOM.
ARE YOU AWARE OF ANY OTHER CIRCUMSTANCES IN MEDICINE WHERE A PERSON IS ARRESTED FOR NOT GETTING THE TREATMENT THAT A DOCTOR SUGGESTS OR FEELS IS APPROPRIATE?
A. I DON'T KNOW OF ANY CIRCUMSTANCES, INCLUDING THIS ONE, WHERE THEY WERE ARRESTED FOR NOT DOING WHAT THE DOCTORS SAID IS APPROPRIATE. REHABILITATION IS SOMETHING THAT WE SUGGEST TO THE MOTHER WHO IS ABUSING DRUGS. ON THE OTHER HAND, THE SOLICITOR SAID IF IN FACT YOU IDENTIFY SOMEONE WHO HAS BROKEN THE LAW, YOU WILL NOT HAVE TO REPORT THEM - YOU WILL NOT HAVE TO REPORT THEM AND WE WILL NOT ARREST THEM IF IN FACT YOU WILL

GET THEM ON REHABILITATION. SO OUR SUGGESTION WAS, TO THE MOTHER, GEE, YOU KNOW, WE DON'T WANT YOU TO BE ARRESTED, WE CERTAINLY DON'T WANT YOU TO BE SEPARATED FROM YOUR BABY, BUT WE WOULD LIKE VERY MUCH FOR YOU TO DO IS TO GET ON REHABILITATION, THEREBY FACILITATING YOUR HEALTH AND THAT OF YOUR SUBSEQUENT PREGNANCIES AND PERHAPS EVEN BENEFITING THE CURRENT PREGNANCY.

Q. DOCTOR, YOU DON'T KNOW OF ANY OTHER HOSPITAL IN THE CHARLESTON AREA WHERE THE PHYSICIANS TOOK THAT POSITION, DO YOU?

MS. SHOWERS: YOUR HONOR, I OBJECT. HE HASN'T LAID A PROPER FOUNDATION FOR THAT QUESTION.
ANY OTHER -

THE COURT: FROM THE WORD WHERE ON I

[PITTARD 234]

COULDN'T UNDERSTAND WHAT YOU SAID.

Q. (BY MR. WHERRY, CONTINUING) YOU'RE NOT AWARE OF ANY OTHER HOSPITALS IN THE CHARLESTON AREA WHERE THE PHYSICIANS TOOK THAT POSITION, ARE YOU?

THE COURT: AND WHAT POSITION ARE YOU SPEAKING OF?

MR. WHERRY: THAT THE PATIENTS WERE TOLD THAT IF

THEY GOT TREATMENT, FROM THE DOCTOR WORDS, THAT THEY WOULD NOT BE REPORTED TO THE SOLICITOR AS HAVING COMMITTED A CRIME.

THE COURT: I SUSTAIN THE OBJECTION. THE WORD OTHER IN THE QUESTION INDICATES THAT HE HAS ADMITTED THAT THAT WAS DONE AT ONE HOSPITAL, AND I THINK - I'M NOT SURE THAT I-I PROPERLY CHARACTERIZES HIS TESTIMONY. THEREFORE I GUESS THAT THE OBJECTION IS THAT THE QUESTION IS ARGUMENTATIVE. IN ANY EVENT, I SUSTAIN THE OBJECTION.

Q. (BY MR. WHERRY, CONTINUING) DOCTOR, WITH THE GOAL OF THE POLICY AS YOU PERCEIVED IT TO BE TO PROTECT THE HEALTH AND WELFARE OF POTENTIAL NEWBORN CHILDREN, AND IN SUBSEQUENT PREGNANCIES OF THESE WOMEN, DOCTOR, WOULD IT NOT HAVE BEEN IMPORTANT TO APPLY THE POLICY TO NONPREGNANT SUBSTANCE ABUSING WOMEN THROUGHOUT THE HOSPITAL?

A. IT WOULD BE APPROPRIATE TO APPLY IT TO ANYONE, AND I WOULD THINK THE ANSWER TO THAT IS YES.

Q. WITHIN THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, THAT WAS NOT DONE WAS IT, DOCTOR?

A. I REALLY DON'T KNOW THE ANSWER TO THAT. I DIDN'T TAKE

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[PITTARD 238]

MAY I HAVE A MOMENT, PLEASE.
Q. (BY MR. WHERRY, CONTINUING) DOCTOR JUST ONE LAST QUESTION. FROM YOUR UNDERSTANDING OF THE POLICY, THE SOLICITOR RECEIVED INFORMATION ABOUT THE POSITIVE UDS, THE POSITIVE DRUG SCREENS FROM THE MEDICAL UNIVERSITY OF SOUTH CAROLINA; ISN'T THAT RIGHT?
A. I HONESTLY DON'T REMEMBER THE MECHANISM BY WHICH IT WAS DONE. WHO ACTUALLY CALLED WHOM, ETCETERA. THE UNDERSTANDING WAS, THAT IF THE PATIENT APPEARED A SECOND TIME, AND DIDN'T RECEIVE REHABILITATIVE SUPPORT, THEN THEY WOULD BE REPORTED TO - I'M NOT SURE WHETHER IT WAS THE POLICE DEPARTMENT OR TO WHOM. I DON'T THINK IT WAS TO THE SOLICITOR'S OFFICE, BUT MAYBE IT WAS. I'M NOT SURE.
Q. TO SOMEONE IN LAW ENFORCEMENT, FAIR?
A. YES, THAT'S FAIR.
Q. AND THAT INFORMATION CAME FROM THE HOSPITAL?
A. YES, IT DID.
Q. AND THE INFORMATION WAS ABOUT THEIR MEDICAL TEST RESULTS, FAIR?
A. NO. YOU COULD SAY THAT, BUT IT WAS MY UNDERSTANDING AND THE UNDERSTANDING OF THE COMMITTEE WHO PUT THIS PROPOSAL TOGETHER THAT IT WAS A LAW THAT IF SOMEONE WAS IDENTIFIED AS

HAVING BEEN ABUSING COCAINE, WE WERE OBLIGED TO REPORT THAT.
Q. SURE. BUT MY QUESTION WAS, DOCTOR. IT WAS THEIR
MEDICAL TEST RESULTS, NOT WHAT THE LAW SAID. MY QUESTION WAS,

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EXCERPT FROM DEPOSITION OF WILLIAM PITTARD

[DR. PITTARD 84]

A. I'M SURE ALL THOSE QUESTIONS CAME UP AT SOME
POINT IN TIME.
Q. IN THE DISCUSSIONS AT THE TIME THAT THE POLICY
WAS FORMULATED, HAD THERE BEEN AN INCREASE OF
BABIES WHO HAD BEEN BORN WHO WERE BEING TREATED AT THE
MEDICAL UNIVERSITY IN THE PERIOD OF TIME IMMEDIATELY
PRECEDING THE INSTITUTION OF THE POLICY IN WHICH THERE
WAS A KNOWN HISTORY OF DRUG OR ALCOHOL ABUSE?
A. WERE WE AWARE THAT THE USE OF ILICIT DRUGS
WAS INCREASING IN THE AREA, IS THAT WHAT YOU'RE
SAYING?
Q. UM-HUM, IN THE TIME PERIOD IMMEDIATELY PRIOR
TO THE INSTITUTION OF THE POLICY.
A. WE WERE AWARE THAT THAT WAS INCREASING.
Q. HOW WERE YOU AWARE OF THAT?

A. JUST FROM LOOKING AT THE LITERATURE, THERE WAS LOTS OF DATA SUGGESTING THAT. AND THEN WE HAD DOCUMENTED IT IN A NUMBER OF MOTHERS AND INFANTS ALSO.
Q. HOW WOULD YOU DOCUMENT IT?
A. WITH URINE DRUG SCREENS MOSTLY.
Q. PRIOR TO THE INTRODUCTION OF THE POLICY IN THE FALL OF 1989 HOW WERE URINE DRUG SCREENS DOCUMENTED IN THE NEONATOLOGY?
A. IN A HAPHAZARD SORT OF WAY, IT WAS NOT VERY ORGANIZED, AS WE MENTIONED EARLIER, SOME PEOPLE

[DR. PITTARD 85]

CHECKED FOR ONE REASON AND OTHERS FOR ANOTHER, SOME DIDN'T CHECK AT ALL.
Q. WAS THERE ANY ATTEMPT TO ORGANIZE THAT INFORMATION IN THE PROCESS OF FORMULATING THE POLICY?
A. THAT'S VERY DIFFICULT TO DO BECAUSE SINCE IT'S DONE IN A HAPHAZARD SORT OF FASHION - I COULD LOOK AT THE DATA AND TELL YOU HOW MANY WERE CHECKED, IF THAT'S WHAT YOU'RE ASKING, IN ANY GIVEN YEAR, BUT IT'S ABOUT - AND I MIGHT NOT EVEN BE ABLE TO DO THAT, AS WE MENTIONED ALSO, I'M NOT SURE THAT WAS ONE OF THE

11 PARAMETERS THAT WAS MONITORED.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF KAREN POLS

[POLS 318]

DIRECT EXAMINATION

BY MS. DUNN:

Q. WOULD YOU STATE YOUR FULL NAME FOR THE COURT, PLEASE.

A. CERTAINLY. KAREN BRIGIT POLS.

Q. WHAT DO YOU DO?

A. I'M A PHYSICIAN. FAMILY PRACTICE PHYSICIAN.

Q. AND WHERE DO YOU WORK AT THIS TIME?

A. I'M MEDICAL DIRECTOR OF THE COMMUNITY HEALTH PROJECT IN NEW YORK CITY.

Q. AND WHERE DID YOU WORK BEFORE YOU TOOK THAT JOB?

A. PRIOR TO THAT I WAS MEDICAL DIRECTOR OF THE SUBSTANCE ABUSE TREATMENT CENTER AT THE V.A. HOSPITAL HERE IN CHARLESTON.

Q. AND WHEN YOU SAY YOU'RE A PHYSICIAN, DOES THAT MEAN YOU'RE A MEDICAL DOCTOR?

A. YES, I AM.

Q. WHERE DID YOU GET YOUR MEDICAL TRAINING?

A. I WAS IN MEDICAL SCHOOL AT BROWN UNIVERSITY IN PROVIDENCE, RHODE ISLAND.

Q. DID YOU DO AN INTERNSHIP AND RESIDENCY?
A. YES, I DID A FAMILY PRACTICE INTERNSHIP AND RESIDENCY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA HERE IN CHARLESTON.
Q. IN CONNECTION WITH YOUR WORK AT THE MEDICAL UNIVERSITY, DID YOU HAVE OCCASION TO WORK IN THE OB&GYN HIGH RISK CLINIC?

[POLS 319]

A. I DID WORK IN THE OB&GYN HIGH RISK CLINIC, YES.
Q. WHEN WAS THAT?
A. I AM THINKING THAT IT IS IN LATE SPRING OR EARLY SUMMER OF 1989.
Q. WAS IT PRIOR TO OCTOBER OF 1989?
A. I BELIEVE SO, YES.
Q. AT THE TIME THAT YOU WORKED WITHIN HIGH RISK OB&GYN, WAS THERE A CRITERIA IN PLACE FOR SCREENING PARTICULAR PATIENTS ACCORDING TO THE - PARTICULAR CRITERIA IN RELATIONSHIP TO URINE DRUG SCREENS?
MR. HOOD: OBJECT TO RELEVANCY, ALL OF THIS IS BEFORE THE POLICY.
THE COURT: GO AHEAD.
Q. (BY MS. DUNN, CONTINUING) IT'S JUST HE
THE COURT: REPEAT THE QUESTION IF YOU WILL.
MS. DUNN: I ASKED HER IF SHE WAS FAMILIAR WITH THE

CRITERIA THAT WAS IN PLACE FOR URINE DRUG SCREENING DURING THE TIME THAT SHE WAS WORKING THERE.

THE COURT: OKAY.

A. THERE WAS URINE DRUG SCREENING THAT WAS DONE DURING THE TIME THAT I WAS THERE. THERE WERE SPECIFIC CRITERIA FOR OBTAINING THOSE URINE DRUG SCREENS.

Q. HOW WERE YOU INFORMED OF THOSE CRITERIA?

A. WELL, THE PRIMARY WAY THAT I WAS INFORMED, WHEN YOU'RE A FAMILY PRACTICE DOCTOR YOU WORK WITH THE OTHER SERVICES IN THE

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[POLS 321]

YOU MAY PROCEED.

Q. (BY MS. DUNN, CONTINUING) AT TEE TIME THAT YOU WORKED AT THE OB&GYN CLINIC?

A. YES.

Q. DURING YOUR TRAINING AT THE MEDICAL UNIVERSITY, DID YOU HAVE ANY SPECIFIC CONTACT WITH SHIRLEY BROWN?

A. YES. THAT IS WHAT I WAS TRYING TO EXPLAIN. PRIMARILY I WORK WITH THE RESIDENTS. I OFTEN WATCHED THE INTERACTION BETWEEN THE RESIDENTS AND SHIRLEY BROWN.

THE COURT: DID YOU HAVE ANY CONTACT WITH SHIRLEY BROWN?

THE WITNESS: YES. I -

THE COURT: YES OR NO.

THE WITNESS: I'M SORRY.
Q. (BY MS. DUNN, CONTINUING) AND WHAT WAS THAT CONTACT?
A. THE DIRECT CONTACT THAT I HAD WITH SHIRLEY BROWN WAS ON AN OCCASION WHEN I HAD FAILED TO OBTAIN A URINE DRUG SCREEN ON A PATIENT.
Q. OKAY.
A. I HAD BEEN CALLED AT NIGHT AND MY JOB WAS -
MR. HOOD: IF THE COURT PLEASE, THIS WAS BEFORE THE POLICY.
THE COURT: I UNDERSTAND THAT AND I OVERRULE THAT OBJECTION.
MR. HOOD: YES, SIR. MY OBJECTION NOW ABOUT THIS

[POLS 322]

SUBJECT MATTER IS IT'S IRRELEVANT TO THIS CASE.
THE COURT: YOU SAID THAT BEFORE AND I OVERRULE THAT AND I'LL BE GLAD TO EXPLAIN WHY IT IS. BUT I EXPLAINED IT EARLIER. AS A MATTER OF FACT THIS IS SOMETHING THAT I WENT INTO IN QUESTIONING A WITNESS MYSELF EARLIER BECAUSE I THOUGHT IT WAS SOMETHING THAT SHOULD BE IN THE RECORD.
MR. HOOD: YES, SIR.
Q. (BY MS. DUNN, CONTINUING) AND WHAT WAS THAT CONTACT WITH NURSE BROWN?

A. CERTAINLY. I HAD NOT OBTAINED A URINE DRUG SCREEN ACCORDING TO ONE OF THE CRITERIA FOR THE POLICY. AND I WAS WITH A GROUP OF RESIDENTS IN A HALLWAY AND SHE CONFRONTED ME WAS VERY CLOSE TO ME AND RAISED HER VOICE AT ME AND SAID WHERE I HAD DONE SOMETHING WRONG, I HADN'T ATTAINED A URINE DRUG SCREEN THAT I WAS SUPPOSED TO.

Q. AND IN WHAT RELATIONSHIP WAS SHE - WHAT WAS SHIRLEY BROWN TO YOU IN TERMS OF GIVING THAT YOU DIRECTION?

A. I'M NOT REALLY SURE. SHE WAS NOT INVOLVED DIRECTLY IN MY TRAINING. I NEVER MET WITH HER ON ANY OCCASION OTHER THAN THAT. SHE NEVER EVALUATED ME NOR DID SHE EVER TEACH ME. I DON'T KNOW, BUT SHE DID GET UPSET WITH ME ABOUT THIS.

Q. WAS YOUR UNDERSTANDING THAT THE CRITERIA FOR TESTING IN TERMS OF YOU URINE DRUG SCREENS THAT YOU WERE FAMILIAR WITH AT THE OB&GYN HIGH RISK CLINIC, SPECIFIC TO TESTING FOR COCAINE?

A. THE SITUATION WHERE I WAS CONFRONTED BY MS. BROWN WAS

[POLS 323]

SPECIFICALLY ABOUT NOT HAVING OBTAINED A COCAINE URINE DRUG SCREEN.

Q. DURING THE PERIOD THAT YOU WORKED IN THE OB&GYN HIGH RISK

CLINIC?
A. YES.
Q. IF A PATIENT THAT YOU WERE TREATING HAD BEEN GIVEN A URINE DRUG SCREEN THAT CAME BACK POSITIVE, WAS THERE SOMETHING THAT YOU WERE SUPPOSED TO DO WITH THAT INFORMATION?
A. I NEVER WAS THERE FOR THE POSITIVE RESULTS. SO, I DON'T HAVE ANY RECOLLECTION OF POSITIVE OR NEGATIVE RESULTS. MY RESPONSIBILITY WAS TO ORDER THE URINE DRUG SCREENS BUT - SO I DON'T KNOW. AND CERTAINLY I WASN'T DOING ANYTHING AS A MEDICAL DOCTOR TAKING CARE OF THESE PATIENTS WITH THOSE RESULTS.
Q. DID THE - DID THE INFORMATION GET BACK TO YOU IN A FASHION IN ORDER THAT YOU COULD USE THE INFORMATION IN TREATING THE PATIENT?
A. I NEVER GOT THE RESULTS POSITIVE OR NEGATIVE ON THE PATIENTS. USUALLY THE PATIENT WOULD HAVE DELIVERED ALREADY OR WOULD BE, YOU KNOW, OUT OF MY CARE, SO I DIDN'T MAKE ANY CLINICAL DECISION BASED ON THAT.
Q. WAS THERE ANYONE WITHIN THE OB&GYN CLINIC THAT WAS COLLECTING INFORMATION CONCERNING COCAINE USE?
A. MY UNDERSTANDING WAS THAT MS. BROWN WAS.
Q. DID YOU HAVE OCCASION IN CONNECTION WITH YOUR TRAINING AT

[POLS 324]

THE MEDICAL UNIVERSITY TO ALSO WORK IN THE NEONATAL CLINIC OR THE NEONATAL NURSERIES?

A. I WORKED IN THE NEWBORN NURSERY, YES, I DID.

Q. AND AT THE MEDICAL UNIVERSITY?

A. AT THE MEDICAL UNIVERSITY, YES.

Q. AND IN WHAT CAPACITY WERE YOU IN THE NEWBORN NURSERY?

A. I WAS A RESIDENT THERE ALSO JUST LIKE I WAS A RESIDENT WITH THE OBSTETRICS - OBSTETRICIANS AND GYNECOLOGISTS, I WOULD TRAIN WITH PEDIATRICIANS ALSO. AND PEDIATRICIANS RAN THE NEWBORN NURSERY AND I ALONGSIDE THEM ALSO.

Q. WHAT TIME FRAME DID YOU WORK IN THE NEWBORN NURSERY?

A. I WORKED IN THE NEWBORN NURSERY INTENSIVELY I BELIEVE SOMETIME IN WINTER OF 1989 OR 1990. I'M NOT EXACTLY SURE OF THE MONTH, BUT I SPENT A MONTH THERE. I ALSO WORKED IN THE NEWBORN NURSERY WHENEVER ONE OF MY FAMILY PRACTICE PATIENTS DELIVERED, BECAUSE THEY WOULD ALSO BE CARED FOR IN THE NEWBORN NURSERY AND I WOULD SEE THEM THERE.

Q. I GOT CONFUSED IN TERMS OF TIME FRAME.

A. I'M SORRY.

Q. DEFINE THAT? WINTER '89, '90?

A. OH, DECEMBER '89, JANUARY 1990 IS MY BEST RECOLLECTION.

Q. AND WAS PART OF THAT TIME FRAME YOU WERE ACTUALLY A RESIDENT IN THE NURSERY?
A. YES.
Q. AND THEN ANOTHER TIME FRAME YOU WERE WORKING IN FAMILY

[POLS 325]

PRACTICE, BUT YOU WOULD COME OVER THERE SOMETIME?
A. THROUGH MY THREE YEARS I WOULD COME OVER THERE.
Q. WHEN DID THAT THREE YEAR PERIOD BEGIN?
A. I'M SORRY. I STARTED MY FAMILY PRACTICE RESIDENCY ON JULY 1, 199 - '88, EXCUSE ME. AND I COMPLETED THAT RESIDENCY ON JUNE 30, 1991. AND THROUGHOUT THAT TIME I WOULD BE IN BOTH, THE OBSTETRICS WARD AND NEWBORN NURSERY TAKING CARE OF FAMILY PRACTICE PATIENTS. AND AS FAR AS SPECIFIC INTENSIVE TRAINING MONTHS, I WOULD BE WORKING WITH THE RESIDENTS.
Q. WHEN YOU WERE ACTUALLY WORKING IN THE LATTER PART OF 1989 AND '90 IN THE NURSERIES AT THE MEDICAL UNIVERSITY?
A. YES.
Q. WAS THERE A CRITERIA IN PLACE FOR SCREENING INFANTS FOR - TO GET A URINE DRUG SCREEN FOR COCAINE?
A. IF YOU MEAN BY SCREENING INFANTS WITHOUT ANY CLINICAL

SYMPTOMS OR CONCERNS, THERE WAS NONE THAT I WAS AWARE OF THEN.

MR. HOOD: IF THE COURT PLEASE, SHE IS QUALIFYING THE QUESTION THAT IS ASKED. AND THE QUESTION THAT WAS ASKED WASN'T ANSWERED. AND I OBJECT TO THE WITNESS CONTROLLING THE QUESTION.

THE COURT: WELL, I WASN'T FOLLOWING IT CLOSELY. AND I HAVE FOLLOWED SOME OF THE QUESTIONING AND I THINK WHAT YOU SAY IS PROBABLY ACCURATE AS TO SOME OF THE QUESTIONS. SO IF YOU WILL, JUST ANSWER THE QUESTION THAT IS ASKED.

YOU MAY PROCEED.

[POLS 326]

MS. DUNN: YOU WANT ME TO REASK THAT QUESTION?

THE COURT: DO THAT.

Q. (BY MS. DUNN, CONTINUING) IN THE TIME FRAME OF WELL, LATE 1989 AND EARLY '90 WHEN YOU WERE WORKING IN YOUR TRAINING IN THE NURSERY AT THE MEDICAL UNIVERSITY, WAS THERE AN ESTABLISHED CRITERIA FOR WHEN YOU SHOULD SCREEN INFANTS TO DETERMINE IF THEY WERE POSITIVE FOR COCAINE?

A. NOT THAT I WAS - EXCUSE ME. NOT THAT I WAS AWARE OF.

Q. DURING THE TIME FRAME THAT YOU WERE A RESIDENT AT FAMILY

MEDICINE, REFRESH OUR MEMORY AS TO WHEN THAT TIME FRAME WAS?
A. FROM JULY OF 1988 TO JUNE OF 1991.
Q. OKAY. DURING THAT TIME FRAME, WHEN YOU WERE AT FAMILY MEDICINE, WERE YOU PROVIDED ANY TRAINING AS A RESIDENT IN RELATIONSHIP TO THE INTERAGENCY POLICY?
A. NO, I WAS NOT.
Q. DID, IN THE TIME FRAME THAT YOU WORKED AT FAMILY MEDICINE, DID YOU APPLY THE POLICY TO ANY OF YOUR PATIENTS AT FAMILY MEDICINE THAT MIGHT HAVE MET THE CRITERIA OF THE POLICY?
A. NO, I DID NOT.
Q. IN THE TIME FRAME THAT YOU WORKED AT FAMILY MEDICINE, WERE YOU AWARE OF A VIDEO BEING AVAILABLE TO PROVIDE TO YOUR PRENATAL PATIENTS?
A. THERE WERE VIDEOS AVAILABLE I BELIEVE ON NUTRITIONAL ISSUES, AND THAT'S THE ONLY SUBJECT IN WHICH I'M AWARE OF

[POLS 327]

VIDEOS BEING AVAILABLE.
Q. IN YOUR WORK AT FAMILY MEDICINE, DID YOU HAVE ANY FORMS PROVIDED FOR YOU TO USE WITH PRENATAL PATIENTS THAT MIGHT HAVE TESTED POSITIVE FOR COCAINE?
A. NO, I DID NOT.
Q. DID YOU HAVE ANY ACCESS TO A LETTER FROM THE SOLICITOR'S

OFFICE?
A. NO, I DID NOT.
Q. AT THE TIME THAT YOU WORKED AT FAMILY MEDICINE, WERE YOU AWARE THAT THERE WAS SOMEONE AT FAMILY MEDICINE WHO ACTUALLY HAD SPECIFIC TRAINING IN SUBSTANCE ABUSE COUNSELING?
A. YES. AND I OFTEN REFERRED PATIENTS TO HER OR WORKED WITH HER TO HELP TAKE CARE OF MY PATIENTS.
Q. WERE ANY OF THOSE PATIENTS PRENATAL PATIENTS?
A. NOT IN MY RECOLLECTION, NO.
Q. WHAT TIME FRAME DID YOU KNOW THIS PERSON WAS AVAILABLE AT FAMILY MEDICINE?
A. I WORKED WITH HER THROUGHOUT MY THREE YEARS AT FAMILY MEDICINE.
Q. WAS SHE AVAILABLE WHEN YOU GOT THERE?
A. YES.
Q. WAS SHE STILL THERE WHEN YOU LEFT?
A. YES.
Q. IN THE TIME FRAME THAT YOU WORKED AT THE V.A. HOSPITAL, DID YOU WORK - YOU SAID - TELL ME AGAIN WHAT YOUR JOB WAS AT

[POLS 328]

THE V.A. HOSPITAL?
A. I WAS MEDICAL DIRECTOR OF THE SUBSTANCE ABUSE TREATMENT CENTER AT THE V.A. HOSPITAL.
Q. IN THAT CAPACITY, DID YOU EVER HAVE OCCASION TO WORK WITH

PREGNANT WOMEN?
A. ON OCCASION, YES.
Q. WAS THERE ANY WORKING ARRANGEMENTS BETWEEN THE V.A. HOSPITAL AND THE CITY POLICE AND SOLICITOR'S OFFICE CONCERNING THE REPORTING OR ARREST OF PREGNANT WOMEN WHO TESTED POSITIVE FOR COCAINE?
A. NOT THAT I'M AWARE OF.
MS. DUNN: BEG THE COURT'S INDULGENCE.
(PAUSE IN PROCEEDINGS.)
Q. (BY MS. DUNN, CONTINUING) DR. POLS, DURING THE TIME FRAME THAT YOU WORKED AT FAMILY MEDICINE.
A. YES.
Q. PART OF THE MEDICAL UNIVERSITY, WAS THERE A PROTOCOL IN PLACE FOR REPORTING SUSPECTED CHILD ABUSE?
A. NO SPECIFIC PROTOCOL, BUT WE DID, YOU KNOW, ADHERE TO THE LAW WITH REGARD TO CHILD ABUSE REPORTING AS WE UNDERSTOOD IT, YEAH.
Q. AND WAS THERE PROTOCOL IN PLACE AT THE V.A. HOSPITAL TO REPORT SUSPECTED CHILD ABUSE?
A. IN ADDITION AT THE V.A. HOSPITAL, YES, WE DID COMPLY WITH THE LAW TO REPORT CHILD ABUSE, YEAH.

[POLS 329]

MS. DUNN: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: CROSS-EXAMINATION.

CROSS-EXAMINATION

BY MR. HOOD:

Q. YOU MENTIONED SHIRLEY BROWN.

A. YES.

Q. SHE POINTED OUT TO YOU THAT YOU HAD FAILED TO OBTAIN A URINE DRUG SCREEN ON A PATIENT THAT YOU WERE SUPPOSED TO OBTAIN ONE ON. YOU WERE EMBARRASSED BY NOT HAVING DONE IT SINCE SHE BROUGHT IT UP IN FRONT OF OTHER RESIDENTS, AND YOU WENT AHEAD AND DID IT LIKE YOU WERE SUPPOSED TO DO?

A. I DID NOT AT THAT TIME. I BELIEVE SOMEONE ELSE DID IT OR - I HAD NOT DONE IT. BUT SHE POINTED OUT THAT I NEGLECTED TO DO IT.

Q. YOUR INVOLVEMENT WITH OBSTETRICS WAS FOR TWO MONTHS?

A. MY INVOLVEMENT IN - I DON'T -

Q. THE DEPARTMENT OF OBSTETRICS?

A. WAS FOR TWO MONTHS.

Q. AND IT WAS BEFORE OCTOBER OF 1989?

A. THAT'S CORRECT.

Q. AND VERY RARELY WOULD YOU AS A FAMILY PRACTICE RESIDENT BE INVOLVED IN THE CARE OF HIGH RISK OBSTETRIC PATIENTS WITH PRETERM LABORS, ABRUPTION OF PLACENTAS, FETAL DEATHS, CORRECT?

A. I WAS VERY RARELY INVOLVED WITH THE LIST OF PATIENTS YOU JUST MENTIONED, YES.

[POLS 330]

Q. EXACTLY. WHEN YOU WERE AT THE V.A. YOU SAW WOMEN VERY RARELY, MAYBE ONE A MONTH OR SO?
A. YEAH, SOMEWHERE AROUND THAT.
Q. AND YOU'RE NOT HERE TO SAY THAT YOU'RE AN EXPERT IN THE FIELD OF OBSTETRICS OR GYNECOLOGY OR PEDIATRICS?
A. I AM NOT.
Q. IN FACT, YOU DON'T KNOW IF YOU HAVE EVER EVEN SEEN A COPY OF THE POLICY THAT THIS LAWSUIT IS ABOUT?
A. OF THE POLICY?
Q. YES.
A. YES, I DON'T KNOW IF I HAVE EVER SEEN THE POLICY.
Q. YOU HAVE NOT TREATED ANY OF THE TEN PLAINTIFFS IN THIS LAWSUIT?
A. NOT TO MY KNOWLEDGE.
Q. AND THE TWO MONTHS THAT YOU WERE AT THE OB CLINIC DURING TRAINING, BEFORE OCTOBER OF '89, YOUR SOLE ROLE WAS TO MAKE SURE PATIENTS HAD URINE DRUG SCREENS THAT WERE SUPPOSED TO HAVE THEM?
A. THAT WAS NOT MY SOLE ROLE, NO.
Q. OKAY. BUT THAT WAS ONE OF YOUR ROLES?
A. IT WAS EXPLAINED TO ME THAT THAT WAS ONE OF MY RESPONSIBILITIES, YES, SIR.
Q. AND OF COURSE WHATEVER THE RESULTS WERE, LIKE ON ANY

PATIENT, THEY WOULD BE PUT IN THE PATIENT'S CHART?
A. THAT'S CORRECT, YES.

[POLS 331]

MR. HOOD: THANK YOU.
REDIRECT EXAMINATION
BY MS. DUNN:
Q. IN YOUR WORK AT FAMILY MEDICINE DID YOU HAVE OCCASION TO SEE PREGNANT WOMEN WHO HAD HAD INCOMPLETE OR LATE PRENATAL CARE?
A. YES, I DID.
Q. AND WOULD THAT HAVE HAPPENED AFTER OCTOBER OF 1989?
A. YES, IT WOULD HAVE.
MS. DUNN: NO FURTHER QUESTIONS, YOUR HONOR.
THE COURT: ANY FURTHER QUESTIONS OF THIS WITNESS?
MR. HOOD: NO THANK YOU, YOUR HONOR.
THE COURT: LET ME ASK YOU JUST ONE QUESTION. DENA CLAIR TESTIFIED.
THE WITNESS: YES.
THE COURT: SHE WAS IN THE SAME FAMILY PRACTICE PLACE THAT YOU WERE.
THE WITNESS: YES.
THE COURT: THE CORNER OF CALHOUN AND HASELL, THAT'S THE SAME UNIT THAT YOU WERE WITH?
THE WITNESS: YES IT IS.
THE COURT: THAT'S THE SAME PLACE YOU WERE DOING YOUR RESIDENCY?

THE WITNESS: YES IT IS.
THE COURT: ANYTHING FURTHER OF THIS WITNESS?

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF SANDRA POWELL

[SANDRA POWELL 149]

A. DOCTOR FOUCHER.
Q. DO YOU KNOW WHY YOU WERE REFERRED TO MUSC?
A. EVE' TIME I GET PREGNANT MY BLOOD PRESSURE GO UP AND DOWN, AND IT GOT HIGH SO THAT WHY HE CATEGORIZED ME AS HIGH RISK, THAT'S WHY HE SENT ME TO THE MEDICAL UNIVERSITY.
Q. APPROXIMATELY WHEN DID YOU BEGIN TO HAVE YOUR PRENATAL CARE AT MUSC? IF YOU REMEMBER.
A. THIS WAS IN MY SECOND MONTH THAT I FOUND OUT I WAS PREGNANT. THAT'S WHEN I WENT TO FOUCHER. I THINK I STARTED TO GO TO MEDICAL PROBABLY IN MAYBE THE THIRD OR FOURTH MONTH OF MY PREGNANCY.
Q. FROM THE TIME YOU BEGAN TO RECEIVE PRENATAL TREATMENT AT MUSC, UNTIL THE BIRTH OF YOUR CHILD DESMOND, DID YOU RECEIVE ANY INFORMATION AT ALL ABOUT SUBSTANCE ABUSE WHILE PREGNANT?
A. NOT THAT I CAN REMEMBER, NO.
Q. WERE YOU SHOWN A MOVIE?
A. NOT THAT I CAN REMEMBER, NO.

Q. DID ANYONE TELL YOU ABOUT A POSITIVE UDS OR POSITIVE URINE DRUG SCREEN?
A. NO.
Q. WOULD YOU TELL THE JURY PLEASE ABOUT THE - WELL, FIRST OF ALL WHAT DAY WAS YOUR CHILD BORN?
A. OCTOBER 13TH.
Q. OF WHAT YEAR?
A. '89.

[SANDRA POWELL 150]

Q. TELL THE JURY PLEASE ABOUT THAT DAY, HOW DID YOU GET TO THE HOSPITAL AND WHAT HAPPENED?
A. WELL, IT WAS RIGHT AFTER HUGO, CUZ I - AFTER HUGO CAME IN SEPTEMBER, SINCE I LOST EVERYTHING THAT I HAD, I DIDN'T HAVE ANY HOME OR NO TRANSPORTATION TO KEEP UP WITH MY APPOINTMENT BACK AND FORTH TO MEDICAL. EVERYBODY IN THE AREA HAD LOST EVERYTHING THEY HAD, TOO.
Q. LET ME STOP YOU THERE. DID YOU EVENTUALLY, FROM WHAT .YOU'RE SAYING, STOP GETTING PRENATAL CARE AFTER HUGO?
A. YES, I DIDN'T HAVE NO WAY TO GET TO MEDICAL AND MC CLELLANVILLE WAS TORN UP WORSE THAN BUCK HALL WAS, SO THERE WAS NOTHING OPEN.
Q. WHAT HAPPENED ON THE 13TH OF OCTOBER?
A. I WENT INTO LABOR ABOUT MAYBE FOUR OR FIVE O'CLOCK THAT

MORNING. AND I THINK MY SISTER RAN TO THE NEIGHBOR'S HOUSE TO TRY TO CALL EMS BECAUSE NO ONE HAD NO TRANSPORTATION. AND I WENT IN EMS. THEY TOOK ME.

Q. WHAT IS THE EMS? IS THAT THE AMBULANCE?

A. YES. YES.

Q. AND DID THEY TAKE YOU DIRECTLY TO MUSC?

A. YES, THEY DID, DIRECTLY THERE.

Q. WHEN YOU WERE IN THE HOSPITAL, WERE YOU STILL IN LABOR?

A. YES. THE MINUTE THEY TAKE ME THROUGH THE DELIVERY ROOM, THAT'S WHERE IT JUST CAME RIGHT OUT. THAT WAS IT.

Q. AFTER YOU DELIVERED THE BABY, WHERE DID YOU GO?

[SANDRA POWELL 151]

A. TO THE RECOVERY ROOM. AND THEN

Q. AND THEN?

A. I FED DESMOND A COUPLE OF TIME. THEY BROUGHT DESMOND TO ME AND I FED HIM A COUPLE OF TIMES. AND THE LAST TIME THE NURSE CAME.

Q. WAS DESMOND BREAST FED OR BOTTLE FED?

A. BOTTLE FED. THE LAST TIME I SAW THE NURSE CAME IN WITH EVERYBODY ELSE BABY AND NOT MINE. I SEEN HER LOOKING AT ME, YOU KNOW, FUNNY.

Q. LET ME STOP YOU FOR A MOMENT. WERE YOU STILL IN THE

RECOVERY ROOM WHEN THAT HAPPENED, OR IN YOUR OWN ROOM?
A. I WAS THERE WITH ANOTHER WOMEN, YOU KNOW - YOU KNOW, AFTER YOU HAVE A BABY.
Q. AND WHAT HAPPENED THEN WHEN DESMOND WASN'T BROUGHT IN TO YOU?
A. I ASKED THE NURSE WHERE IS MY BABY. AND I CAN'T REMEMBER WHATSHE SAID. THEN LATER ON SHIRLEY -
Q. DO YOU REMEMBER WHO THAT NURSE WAS?
A. NO.
Q. OKAY. GO AHEAD.
A. THEN LATER ON SHIRLEY BROWN CAME IN WITH TWO - TWO MEN. I THINK THEY WERE TWO BLACK MEN DRESSED IN SUITS. AND THAT'S WHEN SHE HAD A LETTER OR SOMETHING IN HER HAND AND SHE SAID, MS. POWELL, YOU AND YOUR BABY HAVE BEEN - YOUR URINE HAVE BEEN TESTED POSITIVE FOR COCAINE AND YOU WILL BE LOCK UP.

[SANDRA POWELL 152]

Q. WAS THAT THE FIRST TIME THAT YOU HEARD ABOUT THAT?
A. THAT'S THE FIRST TIME. AND I ASKED, I SAID, PLEASE, WHAT COULD I DO TO STOP THIS OR COULD YOU HELP ME, I MEAN, BECAUSE, YOU KNOW, WHAT IS GOING ON. AND THEN SHE JUST SAID YOU WILL BE LOCKED UP. AND I SAID COULD I AT LEAST CALL MY FAMILY TO

BRING ME SOME CLOTHES. AND SHE SAID YOU CAN MAKE A CALL BUT YOU WILL BE LOCKED UP.

Q. HOW WERE YOU DRESSED AT THAT TIME?

A. THE GOWN THAT THEY WOULD GIVE YOU AFTER YOU HAVE HAD A BABY. I CAME RIGHT FROM THE BED TO THE WHEELCHAIR AND WAS PUSHED OUT.

Q. WE HAVE ALL HEARD THIS BEFORE, BUT I THINK IT'S NECESSARY FOR YOU TO DESCRIBE THAT GOWN SO WE KNOW EXACTLY WHAT GOWN YOU WERE WEARING. WOULD YOU DESCRIBE THAT GOWN FOR THE JURY PLEASE?

A. THE GOWN HAD A TIE TO THE NECK AND A TIE TO THE BACK. SLIP THROUGH AND TIE TO THE NECK AND THE BACK WAS OPEN UP.

Q. WERE YOU ALLOWED TO MAKE THAT PHONE CALL THAT YOU REQUESTED TO HAVE SOMEONE BRING YOU CLOTHING?

A. YES.

Q. DID YOU MAKE THE CALL?

A. YES.

Q. DID CLOTHING COME?

A. NO.

Q. WHY?

[SANDRA POWELL 153]

A. BECAUSE THEY TOOK ME BEFORE.

Q. WHO IS THEY?

A. THE TWO MEN AND SHIRLEY BROWN.

Q. I WOULD LIKE YOU, MS. POWELL, TO DESCRIBE HOW THEY TOOK

YOU. DESCRIBE FOR THE JURY EXACTLY WHAT HAPPENED TO YOU WHEN THEY TOOK YOU?

A. AFTER I GOT OFF THE TELEPHONE I WAS HELPED INTO THE WHEELCHAIR.

Q. WHY WERE YOU HELPED?

A. I JUST HAD A BABY, I WAS STILL BLEEDING, I WAS STILL IN PAIN.

Q. HOW LONG BEFORE THIS HAD YOU HAD THE BABY, IN HOURS OR DAYS?

A. I THINK IT WAS HOURS, BECAUSE I WENT THERE ABOUT FOUR OR FIVE O'CLOCK THAT MORNING, AND I FED DESMOND A COUPLE OF TIMES. BEFORE THAT DAY WAS OVER, I WAS AT THE JAIL.

Q. NOW YOU SAID THAT YOU WERE IN PAIN. NEVER HAVING HAD A BABY, WOULD YOU DESCRIBE THAT PAIN? WHERE WERE YOU IN PAIN?

A. TO MY LOWER PART. THEN I WAS, YOU KNOW, STILL BLEEDING AND -

Q. OKAY. UP TO THAT TIME, HAD THE HOSPITAL SUPPLIED YOU WITH SANITARY NAPKINS AND OTHER THINGS TO TAKE CARE OF YOURSELF AFTER HAVING HAD THE BABY?

A. NO, SIR. WHEN I LEFT THAT DAY?

Q. PRIOR TO LEAVING, WHILE YOU WERE IN THE HOSPITAL?

[SANDRA POWELL 154]

A. IF THEY DID, I DON'T REMEMBER.

Q. OKAY. WHEN YOU WERE PUT IN THE WHEELCHAIR, HOW MANY HOSPITAL GOWNS WERE YOU WEARING?
A. ONE.
Q. WERE YOU HANDCUFFED?
A. YES.
Q. WERE YOU SHACKLED?
A. NOT THEN.
Q. DESCRIBE THE HANDCUFFS, WERE THEY IN FRONT OF YOU OR BEHIND YOUR BACK?
A. IN FRONT OF ME.
Q. AND THERE WERE NO LEG SHACKLES ON YOU AT THAT TIME?
A. NO.
Q. WAS A SHEET PLACED OVER YOU BEFORE YOU WERE TAKEN OUT?
A. YES. SHIRLEY BROWN TOLD THEM TO THROW THE SHEET OVER ME I GUESS TO HIDE THE CUFF. I WAS JUST TO HIDE THE CUFF. AND SHE SAY TAKE HER THROUGH THE BACK ENTRANCE BECAUSE REPORTERS MAY BE IN THE FRONT.
Q. WERE YOU TAKEN THAT WAY?
A. YES.
Q. WERE YOU GIVEN A BOX OF PERSONAL CARE ITEMS TO TAKE WITH YOU?
A. NO, SIR.
Q. DID YOU HAVE ANY PERSONAL CARE ITEMS AVAILABLE TO YOU BY YOURSELF TO TAKE WITH YOU?

[SANDRA POWELL 155]

A. NO, SIR. BECAUSE I COME IN THE AMBULANCE, I MESSED UP MY

CLOTHES PRETTY BAD, THE DRESS I HAD ON, SO I HAD NOTHING ELSE. I DON'T BELIEVE THEY WOULD GIVE ME THAT MESSED UP DRESS TO PUT BACK ON.

Q. WHEN YOU GOT OUTSIDE THE BACK DOOR OF THE HOSPITAL, DESCRIBE FOR THE JURY, PLEASE, GETTING INTO WHATEVER CAR YOU WERE PUT IN TO TAKE YOU?

A. IT WAS A POLICE CAR. AND I BELIEVE IT WAS UP ON THE GROUND. AND FROM THE WHEELCHAIR THEY HELPED ME GET INTO THE BACK OF THE CAR.

Q. WHO HELPED YOU GET IN?

A. ONE OF THE OFFICER GRABBED ME UNDERNEATH MY ARM AND HELP ME GET INTO THE BACK OF THE CAR.

Q. WHY WERE YOU HELPED?

A. AT THAT POINT I PRETTY MUCH COULDN'T MOVE TOO MUCH ON MY OWN.

Q. WAS SHIRLEY BROWN OUT THERE WHEN YOU WERE TAKEN AWAY?

A. NO, I DON'T REMEMBER SEEING HER ALL THE WAY DOWN, IT WAS JUST THE TWO OFFICERS.

Q. DO YOU KNOW WHAT POLICE DEPARTMENT THEY WERE FROM?

A. I THINK IT WAS THE CITY, BECAUSE WE WENT DOWN TO LOCKWOOD BOULEVARD I BELIEVE IT WAS.

Q. CHARLESTON CITY?

A. YES.

Q. AS YOU WERE TAKEN FROM YOUR ROOM, OUT OF THE HOSPITAL,

DID YOU PASS OTHER PEOPLE AS YOU WERE IN THE WHEELCHAIR GOING OUT?

A. YES.

Q. HOW DID YOU FEEL AT THAT POINT IN TIME? DESCRIBE FOR THE JURY WHAT YOUR EMOTIONAL CONDITION WAS AND YOUR PHYSICAL CONDITION?

A. WELL, MY MIND WAS A LOT ON THE PAIN THAT I WAS HAVING. AND I JUST LOOKING AROUND BECAUSE I FELT SO ASHAMED BECAUSE I DON'T KNOW WHAT I HAD DONE, YOU KNOW, FOR THEM TO TREAT ME LIKE THAT. AND FROM THERE, TOOK ME TO THE JAILHOUSE.

Q. WHAT JAILHOUSE?

A. THE CITY.

Q. WERE YOU TAKEN FROM THE CAR?

A. YES, THEY HELPED ME FROM THE CAR.

Q. AT THAT TIME, MS. POWELL, WAS THAT SHEET STILL OVER YOU?

A. NO.

Q. WHEN - WHEN DID YOU LOSE THE SHEET, FOR LACK OF BETTER WORD? WHEN DID THE SHEET STOP BEING OVER YOU?

A. FROM THE HOSPITAL FROM - FROM THEM HELPING ME OUT OF THE WHEELCHAIR INTO THE CAR, THE SHEET WAS LEFT THERE IN THE WHEELCHAIR.

Q. THESE POLICE OFFICERS THAT TOOK YOU, WERE THEY MALE OR FEMALE?

A. THEY WERE MALE.

Q. WHEN YOU WERE PUT IN THE CAR, WERE YOU WEARING ONE

[SANDRA POWELL 157]

HOSPITAL GOWN OR TWO?
A. ONE.
Q. WAS THE BACK STILL OPEN?
A. YES. I WAS TAKING MY HAND TO TRY TO KEEP IT CLOSED.
Q. WHEN YOU GOT TO THE JAIL AND YOU WERE TAKEN OUT OF THE CAR, SAME TWO POLICE OFFICERS?
A. YES.
Q. SAME GOWN?
A. YES.
Q. WAS THE BACK STILL OPEN?
A. YES.
Q. WAS THERE A WHEELCHAIR TO TAKE YOU INTO THE JAIL?
A. NO, THERE WASN'T.
Q. HOW DID YOU GET INTO THE JAIL?
A. WE WALKED IN SLOWLY. THE OFFICER WAS STILL HELPING ME A LITTLE TO GET IN THERE.
Q. WHEN YOU WENT INSIDE THE JAIL, WHERE WAS THE FIRST PLACE YOU WENT?
A. IT'S A ROOM WHERE THEY ASKED ME TO PUT MY HAND - TAKE FINGERPRINT. AND FROM THAT I WALKED INTO ANOTHER LITTLE ROOM.
Q. LET ME STOP YOU THERE FOR A MOMENT, MS. POWELL. HAD YOU EVER BEEN FINGERPRINTED BEFORE?
A. NOT IN MY LIFE.
HAD YOU EVER BEEN ARRESTED BEFORE?
A. NOT IN MY LIFE.

* * *

[SANDRA POWELL 160]

THIS BUILDING?
A. YES. I WAS PLACED INTO A CELL.
Q. DESCRIBE THAT CELL FOR ME, PLEASE. DESCRIBE IT FOR THE JURY, PLEASE.
A. WHEN THEY TOOK ME THERE, THERE WERE TWO OTHER YOUNG LADIES IN THERE. AND THEY TOLD ME THAT THEY WERE FROM GEORGIA, TWO PROSTITUTES SHE SAID THEY WAS, OR WHATEVER. BUT 1 REMEMBER SITTING ON THE EDGE OF A COT, BECAUSE I WAS SO COLD AND SHAKING, BECAUSE I DIDN'T HAVE MY CLOTHES ON AND EVERYTHING AROUND THERE WAS LIKE IRON AND CEMENT AND THEY WERE JUST TALKING AND TALKING, CUSSING UP THE SYSTEM HERE OR WHATEVER.
Q. WHEN YOU WERE SITTING ON THAT COT, WHAT WERE YOU WEARING?
A. SAME GOWN WHAT I CAME UP FROM MEDICAL WITH.
Q. HOW LONG WERE YOU IN THAT CELL?
A. MAYBE FOUR OR FIVE HOURS, SOMETHING LIKE THAT. I'M NOT SURE.
Q. WHILE YOU WERE IN THAT CELL, WERE YOU PROVIDED WITH ANY PERSONAL CARE ITEMS SUCH AS SANITARY NAPKINS?
A. NO, SIR.
Q. DESCRIBE THE LAVATORY FACILITIES IN THAT JAIL CELL? WAS

THERE A TOILET?
A. I CAN'T EVEN REMEMBER. I WAS JUST ON THE EDGE OF THE BED JUST SHAKING, COLD.
Q. WERE YOU CRYING?

[SANDRA POWELL 161]

A. YES, I WAS.
Q. WHY?
A. BECAUSE I LOOKED AROUND AND I NEVER BEEN HERE BEFORE. I ASKED MYSELF WHAT AM I DOING IN HERE. I THOUGHT IT WAS A JOKE. AND I WAS STILL BLEEDING. I DIDN'T FEEL GOOD AT ALL.
Q. MS. POWELL, WHAT HAPPENED NEXT, WERE YOU TAKEN FROM THAT JAIL CELL?
A. YES.
Q. WHERE DID YOU GO?
A. TO LEED AVENUE TO A BIGGER PLACE.
Q. WHEN YOU WENT FROM THAT JAIL CELL TO LEEDS AVENUE, WERE YOU GIVEN CLOTHES?
A. FINALLY MY MOM LIKE DID BRING ME SOME CLOTHES TO THE JAILHOUSE.
Q. DID THEY BRING YOU ANY PERSONAL ITEMS?
A. NO, JUST - THEY JUST BROUGHT ME A PANTS AND A SHIRT, THAT WAS IT.
Q. TO WHICH JAIL DID THEY BRING THOSE THINGS?
A. TO COUNTY JAIL.
Q. OKAY. WAS THAT THE FIRST ONE YOU WERE IN?
A. YES, THAT WAS THE FIRST ONE.

Q. WHEN YOU WERE TRANSPORTED FROM THE COUNTY JAIL TO LEEDS AVENUE, WERE YOU HANDCUFFED?
A. YES.
Q. DESCRIBE THAT?

[SANDRA POWELL 162]

A. WHEN I LEFT FROM THAT JAIL AND. WENT TO THE BIG ONE, I WAS STILL IN HANDCUFF AND I WAS SHACKLED THEN. AND THERE WERE TWO MEN WITH ME. I CAN'T REMEMBER, WE ALL WERE HOOKED ON TOGETHER. BUT I WAS PUT INTO THE CAR WITH TWO MEN AND I DON'T EVEN KNOW IN THE BACK SEAT OF THAT CAR, AND FROM THERE WE WENT TO LEEDS AVENUE.
Q. DESCRIBE THE SHACKLES FOR ME OR FOR THE JURY?
A. MY HANDS WERE HANDCUFFED AND MY FEET WAS CUFFED WITH JUST ENOUGH ROOM TO MAKE SHORT WALKS. AND IT WAS A LONG CHAIN FROM HERE TO THERE. THAT'S WAY I WAS SHACKLED DOWN FROM THE LITTLE JAILHOUSE TO THE BIG ONE.
Q. YOU SAID SOMETHING THAT I WOULD LIKE YOU TO DESCRIBE FURTHER. I THINK YOU SAID WITH JUST ENOUGH CHAIN TO WHAT?
A. TO MAKE SHORT STEPS.
Q. OKAY. WHAT CHAIN WAS THAT, MS. POWELL? WAS THAT A CHAIN BETWEEN THE SHACKLES ON YOUR LEG OR WAS THAT THE CHAIN THAT WENT DOWN THE BOTTOM?

A. IT SEEMED LIKE THERE WAS A LONG ONE FROM HERE TO THERE.
Q. HERE TO THERE, INDICATING FOR THE RECORD FROM ABOUT HER CHEST AREA DOWN TO THE FEET.
A. FROM MY HAND DOWN TO THERE. AND IN BETWEEN MY LEG THERE WAS ANOTHER ONE THERE, LONG ENOUGH TO MAKE SHORT STEPS.
Q. DESCRIBE, IN RELATION TO YOUR PHYSICAL CONDITION, WHAT IT WAS NECESSARY FOR YOU TO DO IN ORDER TO WALK? WERE YOU EXPERIENCING ANY PAIN THEN?

* * *

[SANDRA POWELL 164]

PUT ME IN ANOTHER CELL.
Q. WERE YOU SEARCHED AT THAT JAIL?
A. I DON'T REMEMBER.
Q. OKAY. WHEN YOU CHANGED INTO THE BLUE DRESS, WERE YOU GIVEN PRIVACY TO CHANGE?
A. I DON'T REMEMBER GIVEN PRIVACY TO CHANGE.
Q. WERE YOU GIVEN PERSONAL CARE ITEMS LIKE SANITARY NAPKINS?
A. NO, SIR.
Q. BY THE TIME YOU WERE PROCESSED INTO LEEDS AVENUE, HOW LONG HAD IT BEEN SINCE YOU WERE GIVEN OR ALLOWED TO GET A FRESH, CLEAN SANITARY NAPKIN?
A. AT NO TIME. I HAD THAT SAME ONE NAPKIN THAT I LEFT THE HOSPITAL WITH.
Q. HOW LONG BEFORE CHECKING INTO LEEDS AVENUE DID YOU LEAVE

THE HOSPITAL APPROXIMATELY?
A. IT MIGHT HAVE BEEN 30 MINUTES FROM THERE TO UP THERE.
Q. IT TOOK 30 MINUTES TO GET FROM THE HOSPITAL TO THE LEEDS AVENUE JAIL?
A. NO, SIR. FROM THE LITTLE JAIL TO THE BIG JAIL I THINK IT WAS.
Q. OKAY. AFTER YOU GOT THE JAIL DRESS, WERE YOU PUT IN THE CELL THERE AT THE JAIL?
A. YES, SIR.
Q. DESCRIBE THAT CELL FOR THE JURORS, PLEASE.
A. IT WAS BIG.

* * *

[SANDRA POWELL 166]

A. THAT WAS FROM AFTER HUGO AFTER MY HOUSE WAS DESTROYED, AND THAT WAS THE INSURANCE MONEY THAT WE HAD THING INSURED IN THE HOUSE. SO SHE HAD TO USE THAT.
Q. HOW MUCH DID YOU HAVE TO PAY THE BONDSMAN?
A. IT WAS A THOUSAND DOLLARS. AND WE ONLY COLLECTED THREE THOUSAND AND THE OTHER TWO THOUSAND SHE HAD TO USE TO GET A LAWYER.
Q. DID YOUR FAMILY HIRE A LAWYER FOR YOU ON THIS CASE?
A. YES, SIR.
Q. WHO WAS THAT LAWYER? DO YOU REMEMBER HIS OR HER NAME?
A. ROBERT HOWE.

Q. OKAY. AFTER YOU WERE RELEASED FROM JAIL, HAVING POSTED THE BAIL, DID YOU EVER GO TO COURT FOR THESE CRIMINAL CHARGES?
A. I WENT TO SEE A JUDGE.
Q. AND WHAT HAPPENED WHEN YOU WENT TO SEE THE JUDGE?
A. IN ORDER TO - THEY PUT ME UNDER HOUSE ARREST OR SOMETHING. I COULDN'T COME OUT TO TALK WITH NOBODY OR DO ANYTHING. AND THEY SAID IN ORDER FOR ME TO GET MY CHILD BACK I HAD TO GO TO A DRUG REHAB PLACE.
Q. MS. POWELL, AT THE TIME WHEN THIS ALL HAPPENED TO YOU, WERE YOU WORKING?
A. NO.
Q. WHAT DRUG REHAB PROGRAM DID YOU GO THROUGH?
A. I WENT TO SUBSTANCE ABUSE FOR MAYBE TWO DAYS OUT OF A WEEK.

[SANDRA POWELL 167]

Q. NOW IS THAT CHARLESTON COUNTY SUBSTANCE ABUSE?
A. YES.
Q. YOU WENT TWO DAYS A WEEK?
A. YES.
Q. AND THEN WHAT?
A. AFTER THAT THEY SEND ME TO ANOTHER PLACE, WAY WEST OF THE ASHLEY. I HAD TO CATCH A RIDE EVERY DAY. I THINK ABOUT THREE OR FOUR DAYS OUT OF THE WEEK.
Q. DID YOU HAVE A CAR AT THAT POINT IN TIME?

A. NO, SIR.
Q. WAS PUBLIC TRANSPORTATION AVAILABLE TO YOU?
A. NO, SIR.
Q. DO YOU REMEMBER THE NAME OF THE PLACE THAT YOU WENT THREE OR FOUR DAYS A WEEK THAT THEY SENT YOU TO?
A. ALL I REMEMBER WAS IT WAS NUMBER 1 CARRIAGE LANE.
Q. HOW LONG DID YOU GO TO THAT PROGRAM?
A. I THINK IT WAS 6 MONTHS. I BELIEVE IT WAS.
Q. DID IT WORK?
A. TO A CERTAIN POINT IT DID.
Q. WHAT POINT? DESCRIBE TO THE JURY WHAT THE PROGRAM WAS AND WHAT YOU WENT THROUGH AND HOW IT WORKED.
A. WELL, FOR EVERY TIME I WENT I WOULD HAVE TO CATCH A RIDE, LIKE AN IN-AND-OUT THING. I WOULD GO THERE FROM TEN UNTIL MAYBE FOUR IN THE AFTERNOON. AND FROM THERE CATCH A RIDE HOME. IT WORK TO A CERTAIN DEGREE, BECAUSE ONE THING THEY DID

TAUGHT ME IN ORDER TO LOVE ANYBODY, FIRST YOU GOT TO LOVE YOURSELF. THAT WAS THE MAIN THING THEY TAUGHT ME. I FIRST GOT TO LOVE MYSELF. AND TO THAT THE HIGHER PART, EVERYTHING FROM ME TO GOD, IT HAD WORKED FOR ME FOR THE DRUGS BECAUSE I

BEEN CLEAN OFF OF IT. EVERY YEAR MY CHILD GETS OLDER, I BEEN CLEAN. BUT IT TURNED ME INTO SOMETHING ELSE.

Q. WHAT DID IT TURN YOU INTO?

A. EVER SINCE THIS ORDEAL, SINCE I BEEN LOCKED UP, IT'S HARD FOR ME TO SLEEP AT NIGHT ANYMORE BECAUSE I'M SO AFRAID SOMEBODY IS COMING TO GET ME. SO I HAVE TO DRINK JUST TO GO TO SLEEP TO GO THROUGH WITH IT. AND WHEN I DO WAKE UP I'M SO AFRAID, I GOT SUCH A PAIN IN MY CHEST. AND SO I WENT TO MY DOCTOR AND I TOLD HIM I CANNOT SLEEP AT NIGHT. SO HE PRESCRIBED VALIUM FOR ME. AND I DON'T WANT TO TAKE THAT BECAUSE I DON'T WANT TO GET HOOKED ON ANYTHING ELSE. AND I PRAY EVERY NIGHT, PLEASE GOD TO HELP ME BECAUSE WHY IS IT THAT I CANNOT SLEEP. AND JUST BEEN LIKE THIS EVER SINCE I WAS LOCKED UP. I JUST CANNOT SLEEP AT NIGHT.

Q. SO RATHER THAN USING COCAINE, OR VALIUM, YOU'RE USING ALCOHOL TO SLEEP?

A. YES.

Q. HAVE YOU SOUGHT HELP FOR THAT?

A. SIR?

Q. HAVE YOU SOUGHT HELP FOR YOUR USE OF ALCOHOL?

A. NO. IN THE DAYTIME I DON'T EVEN WANT IT, JUST WHEN NIGHT

COME BECAUSE I KNOW I GOT TO GO TO SLEEP.
Q. WHAT HAPPENED, MS. POWELL, IF YOU KNOW, WHAT HAPPENED TO THE CRIMINAL CHARGES THAT WERE BROUGHT AGAINST YOU? DID YOUR LAWYER EVER TELL YOU?
A. NO. AFTER I COMPLETED THE PROGRAM, THEY - THEY GAVE ME BACK MY CHILD AND THERE WAS NOTHING ELSE WAS SAID ABOUT IT.
Q. AFTER YOU COMPLETED THE PROGRAM, DESMOND WAS GIVEN BACK TO YOU?
A. AFTER I COMPLETE THE PROGRAM, I HAD TO GO FIND A JOB.
AND THEN BETWEEN MY - THE LAWYERS OR WHATEVER HE DID, THEN I GOT BACK DESMOND. FOUR MONTHS.
Q. DURING ALL OF THIS TIME WHEN YOU DIDN'T HAVE DESMOND, WHEN YOU WERE GOING THROUGH THE PROGRAM, DID YOU HAVE YOUR OTHER CHILD?
A. UMM-HMM. YES.
Q. DID DSS OR THE SOLICITOR'S OFFICE OR ANYONE EVER COME TO SEE ABOUT THE OTHER CHILD AND TAKE THE OTHER CHILD FROM YOU?
A. NO, SIR.
Q. DO YOU WORK NOW?
A. YES.
Q. WHERE DO YOU WORK?
A. SANDPIPER VILLAGE IN MOUNT PLEASANT.
Q. WHAT DO YOU DO THERE?
A. I'M A COOK.

Q. DO YOU HAVE CHILD CARE FOR DESMOND AND YOUR OTHER CHILD

* * *

[SANDRA POWELL 171]

AND WE'LL PUT THE BURDEN ON YOU TO BRING TO THE COURT'S ATTENTION ANY PORTIONS THEREOF THAT YOU WOULD LIKE TO STRIKE.

MR. WHERRY: SURE.

THE COURT: BEFORE THEY'RE ACTUALLY SENT IN TO - TO THE JURY.

MR. WHERRY: SURE.

CROSS-EXAMINATION

BY MS. CRAIG:

Q. GOOD MORNING, MS. POWELL. YOU FIRST STARTED USING COCAINE IN THE 1970'S; IS THAT CORRECT?

A. I'M NOT SURE. SEVENTIES? NO.

Q. THAT'S NOT CORRECT?

A. IT MIGHT BE. I'M NOT SURE. I'M NOT SURE.

Q. WOULD YOU LIKE TO SEE YOUR DEPOSITION TO REFRESH YOUR RECOLLECTION?

A. THAT WOULD BE FINE.

Q. MS. POWELL, IF YOU WILL TURN TO PAGE 36, PLEASE. YOUR DEPOSITION WAS TAKEN ON AUGUST 16, 1995, BEFORE A COURT REPORTER IN THE PRESENCE OF YOUR ATTORNEYS; IS THAT CORRECT?

A. YES.

Q. BY THE WAY, ON PAGE 36 OF YOUR DEPOSITION, LINE 9, I'LL READ THE QUESTION. IF YOU WILL PLEASE FOLLOW WITH THE

ANSWER.

QUESTION, "WHEN WAS THE FIRST TIME YOU USED OR CONSUMED COCAINE?"

[SANDRA POWELL 172]

ANSWER?

A. "IT WAS, I THINK IT WAS AFTER I CAME FROM" - WHERE IS IT?

Q. YOU'RE CORRECT, IF YOU WILL JUST CONTINUE READING WHERE YOU LEFT OFF?

A. THAT'S WHERE, NUMBER 11?

Q. LINE 11.

A. OKAY. "THERE WAS, I THINK IT WAS AFTER I CAME FROM DENMARK TECH."

Q. "WOULD THAT STILL BE IN THE 1970'S?"AND YOUR RESPONSE?

A. "YES."

Q. THANK YOU. SO YOU CONTINUED TO USE COCAINE IN THE 1970'S IS THAT CORRECT?

A. FOR A CERTAIN PORTION OF IT, YES.

Q. IN FACT, YOUR COCAINE USE INCREASED IN THE 1970'S FROM ONCE A DAY OR TO EVERY OTHER DAY; IS THAT CORRECT?

A, MAYBE.

Q. IS THAT A YES?

A. YES.

Q. OKAY. NOW, MS. POWELL, YOU WERE PREGNANT, AS YOU TESTIFIED EARLIER, WITH DESMOND IN 1989; IS THAT CORRECT?

A. YES.

Q. AND AT THIS TIME YOU WERE USING APPROXIMATELY A DIME BAG OF COCAINE A WEEK WHEN YOU WERE PREGNANT WITH DESMOND; IS THAT CORRECT?

[SANDRA POWELL 173]

A. I BELIEVE SO.
Q. IN MAY OF 1989, YOU CAME TO THE MEDICAL UNIVERSITY, THE OUTPATIENT CLINIC FOR PRENATAL CARE. DO YOU REMEMBER THAT?
A. I REMEMBER COMING THERE, YES.
Q. YOU DO. I'M GOING TO SHOW YOU WHAT WE WOULD LIKE TO MARK AS DEFENDANT EXHIBIT 95-A. THIS IS A CONSENT FORM WHICH YOU SIGNED AT THE MEDICAL UNIVERSITY WHEN YOU WENT FOR PRENATAL MEDICAL CARE ON MAY 24, 1989. IS THAT YOUR SIGNATURE?
A. IT LOOKS LIKE IT.
Q. THAT'S YOUR SIGNATURE?
A. YEAH, IT LOOKS LIKE IT.
Q. THANK YOU.
MS. CRAIG: DEFENDANTS WOULD LIKE TO ADMIT EXHIBIT 95-A INTO EVIDENCE.
MR. WHERRY: YOUR HONOR, I WOULD OBJECT TO THIS, NOT TO THE AUTHENTICITY OF IT, BUT ACCORDING TO THE DATE THAT HAS BEEN TESTIFIED TO, THIS IS WELL PRE-POLICY.
THE COURT: COULD I SEE IT, PLEASE.
MS. CRAIG: YOUR HONOR, SHE TESTIFIED THAT SHE HAD

PRENATAL CARE AT THE MEDICAL UNIVERSITY.
THE COURT: YOUR OBJECTION IS ON WHAT GROUND?
MR. WHERRY: RELEVANCE, SIR, BECAUSE IT'S WELL BEFORE THE POLICY WAS ESTABLISHED, ACCORDING TO ALL OF THE EVIDENCE AND ACCORDING TO ANYONE'S POSITION.
THE COURT: WELL, DOESN'T THIS RELATE TO THE

[SANDRA POWELL 174]

PREGNANCY OF DESMOND, THE BIRTH OF DESMOND?
MR. WHERRY: YES, SIR, IT DOES.
THE COURT: OKAY.
MR. WHERRY: YOUR HONOR, I GUESS WHAT I'M SAYING IS, THAT INSOFAR AS IT MIGHT BE CONSTRUED TO BE A CONSENT FOR URINE DRUG SCREENING, WHICH I THINK IS THE POSITION THAT DEFENDANTS' TAKE, IF THERE WAS NO POLICY IN EXISTENCE AT THE TIME WHEN THIS DOCUMENT WAS SIGNED, THERE CAN BE NO POSITION OF THE HOSPITAL WITH RESPECT -
THE COURT: I OVERRULE THE OBJECTION. I THINK IT'S RELEVANT.
MS. CRAIG: THANK YOU, YOUR HONOR.
Q. (BY MS. CRAIG, CONTINUING) MS. POWELL, YOU RETURNED TO THE MEDICAL UNIVERSITY IN OCTOBER OF 1989 AND DELIVERED YOUR

SON DESMOND; IS THAT CORRECT?
A. YES.
Q. AT THAT TIME DID ANYONE ACCOMPANY YOU TO THE HOSPITAL?
A. NO.
Q. WHO IS JOSEPHINE MILLER?
A. MY MOTHER.
Q. THIS IS A CONSENT FORM WHEN YOU WERE ADMITTED TO THE HOSPITAL TO DELIVER YOUR SON DESMOND. IS THAT YOUR MOTHER'S SIGNATURE AT THE BOTTOM?
A. IT LOOKS LIKE IT.
MS. CRAIG: DEFENDANTS' WOULD LIKE TO ADMIT EXHIBIT

[SANDRA POWELL 175]

95-B INTO EVIDENCE.
MR. WHERRY: MAY I SEE IT, PLEASE?
MS. CRAIG: CERTAINLY.
MR. WHERRY: NO OBJECTION, YOUR HONOR.
MS. CRAIG: THANK YOU.
Q. (BY MS. CRAIG, CONTINUING) ON THE DAY THAT YOU DELIVERED DESMOND, THAT WOULD BE OCTOBER 13, 1989?
A. YES.
Q. YOU TESTED POSITIVE FOR COCAINE; IS THAT CORRECT?
A. THAT'S WHAT SHIRLEY BROWN TOLD ME.
Q. IF IN YOUR MEDICAL RECORD IT INDICATES THAT YOU TESTED POSITIVE FOR COCAINE, WOULD YOU DISPUTE THAT, MS. POWELL?
A. IF MY MEDICAID

Q. IF YOUR MEDICAL RECORD FROM THE MEDICAL UNIVERSITY INDICATED THAT YOU TESTED POSITIVE FOR COCAINE, WOULD YOU DISPUTE THAT?
A. NO, MA'AM.
Q. ON OCTOBER 13, 1989, THE DAY YOU DELIVERED DESMOND, HE ALSO TESTED POSITIVE FOR COCAINE; IS THAT CORRECT?
A. THAT'S WHAT WAS SAID.
Q. AND ISN'T IT TRUE THAT YOU ADMITTED TO USING COCAINE EITHER THE DAY OR TWO DAYS BEFORE DELIVERING DESMOND?
A. YES, I DID.
Q. NOW, MS. POWELL, YOU WERE ARRESTED ON OCTOBER 14, 1989, AND CHARGED WITH UNLAWFUL NEGLECT OF A CHILD; IS THAT CORRECT?

[SANDRA POWELL 176]

A. YES.
Q. AND THEN A FEW WEEKS LATER YOU WERE ADMITTED INTO SUBSTANCE ABUSE TREATMENT AT THE CHARLESTON COUNTY SUBSTANCE ABUSE OUTPATIENT CLINIC; IS THAT CORRECT?
A. YES.
Q. YOU HAVE TESTED EARLIER THAT YOU HAD SOME DIFFICULTY WITH TRANSPORTATION GETTING TO YOUR SUBSTANCE ABUSE APPOINTMENTS; IS THAT CORRECT?
A. I HAD TO CATCH A RIDE TO GET THERE.

Q. WOULD YOU MIND PLEASE OPENING YOUR DEPOSITION TO PAGE 24.

MR. WHERRY: WHAT LINE, PLEASE?

MS. CRAIG: LINE 2.

Q. (BY MS. CRAIG, CONTINUING) PLEASE TELL ME WHEN YOU'RE READY. ARE YOU ON PAGE 24? ARE YOU ON PAGE 24?

A. YES.

Q. I'M GOING TO READ THE QUESTION STARTING WITH LINE 2. IF YOU WILL REPLY WITH THE ANSWER.

QUESTION: "IN THE PAST TEN YEARS HAS THERE EVER BEEN A TIME WHEN DID YOU NOT HAVE A CAR?"

YOUR ANSWER?

A. "NOT REALLY, NO."

Q. EXCUSE ME?

A. "NOT REALLY, NO."

Q. "SO APPROXIMATELY FROM 1985 UNTIL NOW YOU PRETTY MUCH

[SANDRA POWELL 177]

ALWAYS HAD" -

YOUR ANSWER?

A. "HAD A CAR, YES."

Q. AND YOU WENT TO SUBSTANCE ABUSE IN 1989; IS. THAT CORRECT?

A. YES.

Q. THANK YOU.

A. BUT, MISS -

Q. THANK YOU FOR ANSWERING MY QUESTION.

NOW, MS. POWELL, YOU FULLY COMPLETED YOUR SUBSTANCE

ABUSE PROGRAM; IS THAT CORRECT?
A. YES.
Q. THAT MEANS YOU SUCCESSFULLY COMPLETED YOUR TREATMENT?
A. YES.
Q. AND YOU ADMITTED THAT YOUR SUBSTANCE ABUSE COUNSELING AND TREATMENT HELPED YOU TO GET OFF DRUGS; IS THAT CORRECT?
A. YES. HELPED ME TO LOVE MYSELF.
Q. MS. POWELL, HAVE YOU USED COCAINE SINCE YOUR ARREST?
A. NO, SIR. NO, MA'AM.
Q. SO AFTER ALMOST TWENTY YEARS OF USING COCAINE, YOU GOT INTO SUBSTANCE ABUSE TREATMENT, YOU SUCCESSFULLY COMPLETED THAT SUBSTANCE ABUSE TREATMENT AND YOU HAVE NEVER USED COCAINE SINCE, IS THAT YOUR TESTIMONY TODAY?
A. TWENTY YEARS OF USING COCAINE? NO, MA'AM:
Q. YOU DID NOT START USING COCAINE IN 1970'S?
A. TWENTY YEARS OF USING IT? NO, MA'AM.

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Q. 1970'S AND 1980'S?
A. NOT TWENTY YEARS.
Q. AFTER USING COCAINE FOR A SIGNIFICANT PERIOD OF TIME YOU GOT INTO SUBSTANCE ABUSE AND SUCCESSFULLY COMPLETED SUBSTANCE ABUSE. HAVE YOU EVER USED COCAINE SINCE YOUR ARREST, MS. POWELL?
A. NO, MA'AM.

MS. CRAIG: THANK YOU. MAY I HAVE A MINUTE, PLEASE.

(PAUSE.)

MS. CRAIG: THANK YOU VERY MUCH. NO FURTHER QUESTIONS.

MR. WHERRY: MAY I REDIRECT, YOUR HONOR?

THE COURT: YES.

REDIRECT EXAMINATION

BY MR. WHERRY:

Q. MS. POWELL, JUST ONE OR TWO QUESTIONS. YOU WERE ASKED ABOUT USING A DIME BAG A WEEK?

A. YES, SIR.

Q. A DIME BAG, MS. POWELL, IS THAT TEN DOLLARS WORTH OF COCAINE?

A. YES, SIR.

Q. IS THAT WHERE THE WORD DIME COMES FROM?

A. YES, SIR.

Q. A DIME BAG OF COCAINE, WOULD YOU EXPLAIN FOR THE JURY,

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPT FROM TESTIMONY OF ROBERT ROBERTS

[ROBERTS 3]

(TESTIMONY EXCERPT OF CAPTAIN ROBERTS 11-26-97.)
THE COURT: G00D MORNING. KEEP YOUR SEAT.
GOOD MORNING, LADIES AND GENTLEMEN.
THE JURY: GOOD MORNING, YOUR HONOR.
THE COURT: ALL RIGHT, YOU MAY PROCEED.
MR. WHERRY: CALL CAPTAIN ROBERT ROBERTS, YOUR HONOR. AND I CALL HIM AS AN ADVERSE WITNESS.

- - -

ROBERT ROBERTS, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MR. WHERRY:

Q. CAPTAIN ROBERTS, YOU'RE A CAPTAIN WITH THE CHARLESTON CITY POLICE DEPARTMENT; IS THAT CORRECT?

A. I'M A RETIRED CAPTAIN.

Q. CAPTAIN, YOU STILL WORK THREE DAYS A WEEK WITH THE CHARLESTON CITY POLICE DEPARTMENT?

A. I DO AS ADVISORY CAPACITY.

Q. YOU STILL HOLD THE RANK AS CAPTAIN?
A. NO, SIR, I AM RETIRED.
Q. WHEN DID YOU RETIRE?
A. FEBRUARY OF 1994.
Q. SO IN '89, '90, '91, YOU WERE A CAPTAIN WITH THE CHARLESTON CITY POLICE DEPARTMENT?
A. THAT IS CORRECT.

* * *

[ROBERTS 6]

WOULD OBJECT TO THE ADMISSION INTO EVIDENCE.

THE COURT: SIR, ARE YOU SAYING IN THAT TIME FRAME THIS IS THE ONLY BELT THAT POLICEMEN USED IN CHARLESTON?

THE WITNESS: YES, SIR. THIS WAS THE BELT THAT WAS ROUTINELY USED. I WAS NOT PRESENT, HOWEVER, AT THE ARREST OF THE WOMEN.

THE COURT: I'LL PERMIT IT IN.

MR. WHERRY: THANK YOU, SIR.

MR. HOOD: YOUR HONOR, THESE ARE THINGS THAT ARE ACTUALLY USED. I MEAN, HE IS NOT BUYING THEM AND GETTING THEM AND SUBPOENAING THEM, AND WE WANT TO GET THEM BACK AT SOME POINT. CAN WE DO THAT?

THE COURT: YOU KNOW HOW TO DO THAT. THAT WON'T BE ANY PROBLEM.

GO AHEAD.

MR. WHERRY: THANK YOU, SIR.

Q. (BY MR. WHERRY, CONTINUING) SHOWING YOU WHAT HAS BEEN

MARKED PLAINTIFF'S EXHIBIT 239 FOR IDENTIFICATION, AND ASK YOU, SIR, WHETHER THAT IS THE TYPE OF LEG SHACKLES USED TO RESTRAIN THE PLAINTIFFS IN THIS CASE?

A. YES.

IS THAT THE ONLY TYPE OF LEG SHACKLE USED BY THE CHARLESTON POLICE DEPARTMENT DURING THE TIME IN QUESTION?

A. YES, I BELIEVE IT WAS.

MR. WHERRY: YOUR HONOR, I MOVE 239 INTO EVIDENCE.

[ROBERTS 7]

Q. (BY MR. WHERRY, CONTINUING) LET ME SHOW YOU, CAPTAIN, 240 FOR IDENTIFICATION, AND ASK YOU, SIR, WHETHER THAT IS THE TYPE OF HANDCUFF USED TO RESTRAIN THE PLAINTIFFS IN THIS CASE?

A. YES.

Q. WERE THERE ANY OTHER TYPE OF HANDCUFFS USED BY THE CHARLESTON CITY POLICE DEPARTMENT DURING THE POINT IN TIME THAT WE'RE CONSIDERING?

A. NOT TO THE BEST OF MY KNOWLEDGE.

MR. WHERRY: YOUR HONOR, I MOVE 240 INTO EVIDENCE.

MS. SHOWERS: SAME OBJECTION, YOUR HONOR.

THE COURT: OVERRULED.

MR. WHERRY: YOUR HONOR, I HAVE A KEY, IT'S NOT HIS, THAT WILL OPERATE THESE, WHICH I'M PLEASED TO LEAVE WITH THE

COURT CLERK, BECAUSE THEY CAN ACTUALLY BE OPENED AND CLOSED AND HOOKED ONTO SOMETHING. AND I'LL BE PLEASED TO LEAVE THAT WITH THE COURT IF IT WOULD LIKE, OR NOT.

THE COURT: WELL, I GUESS GIVE IT TO THE CLERK. I DON'T THINK SHE IS GOING TO LOCK HERSELF UP, BUT YOU CAN'T EVER TELL. SHE MIGHT TAKE THEM HOME WITH HER AND LOCK UP HER HUSBAND TONIGHT.

MR. WHERRY: THAT'S WHY I'M LEAVING THEM HERE SO MY WIFE WON'T USE THEM.

Q. (BY MR. WHERRY, CONTINUING) CAPTAIN, THIS BELT THAT HAS BEEN MARKED 238 HAS WHAT APPEARS TO BE A RING, A D RING THAT IS IN THE FRONT; IS THAT RIGHT?

[ROBERTS 8]

A. CORRECT.

Q. IN USING THIS BELT, CAPTAIN, I TAKE IT THAT THE BUCKLE GOES TO THE REAR?

A. YES, SIR.

Q. AND THE D RING IS IN THE FRONT?

A. THAT'S CORRECT.

Q. AND THEN USING IT, CAPTAIN, DO THE HANDCUFFS GO THROUGH THAT BELT SO THAT THE HANDCUFFS ARE ATTACHED TO THE BELT?

A. YES, THEY DO.

Q. AND, CAPTAIN, WITH THE SHACKLES, IS THERE A CHAIN THAT

CAN BE USED THAT WILL CONNECT THE SHACKLES TO THE BELT?
A. YES. NORMALLY THESE - AT LEAST WHEN I USE THEM, THE SHACKLES WENT AROUND THE ANKLES AND THE HANDCUFFS, THE TRADITIONAL HANDCUFFS WENT THROUGH THEY EYELET.
Q. SO TRADITIONALLY THE LEG SHACKLES ARE NOT CONNECTED TO THE BELT; IS THAT CORRECT?
A. THEY CAN BE. THAT'S ONE OTHER MANNER, BUT I NORMALLY USE THEM AS I DESCRIBED.
Q. CAPTAIN, THE PURPOSE FOR THE RESTRAINTS?
A. YES, SIR.
Q. FOR THE HANDCUFFS, BELT AND SHACKLES, IS TO PUT A PRISONER OR AN ARRESTED PERSON IN A POSITION WHERE THEY CAN'T GET AWAY FROM THE CUSTODIAL OFFICER, FAIR?
A. YES.
Q. OR HARM THE OFFICER?

[ROBERTS 9]

A. YES.
Q. WOULD IT BE FAIR - WELL, LET ME WITHDRAW THAT.
YOU WERE INVOLVED IN THE INTERAGENCY POLICY AS IT CAME TO BE KNOWN, WERE YOU NOT?
A. YES, I WAS.
Q. AND YOU ATTENDED A NUMBER OF MEETINGS ON BEHALF OF CHIEF REUBEN GREENBERG IN YOUR DEPARTMENT?

A. YES, I DID.
Q. AND AT SOME OF THOSE MEETINGS, YOU BROUGHT OTHER REPRESENTATIVES OF THE CHARLESTON CITY POLICE DEPARTMENT?
A. TO ONE IN PARTICULAR, YES.
Q. CAPTAIN, YOU WERE THE SUPERIOR OFFICER OF THE DETECTIVE BUREAU AT THE CHARLESTON CITY POLICE DEPARTMENT DURING THE OPERATIVE TIME, WERE YOU NOT?
A. YES, I WAS.
Q. AND IN THAT CAPACITY YOU WERE THE SUPERVISORY OFFICER OF DETECTIVE WARING; IS THAT RIGHT?
A. THAT'S CORRECT.
Q. DETECTIVE WARING WAS A DETECTIVE ASSIGNED TO THE CHARLESTON CITY POLICE DEPARTMENT RESPONSIBLE FOR THE MOST PART WITH THE IMPLEMENTATION OF THE INTERAGENCY POLICY FROM THE PERSPECTIVE OF THE CHARLESTON POLICE DEPARTMENT, FAIR?
A. CORRECT.
Q. YOU WERE NOT INVOLVED IN THE POLICY-MAKING DECISION OR THE CREATION OF THE POLICY, WERE YOU?

[ROBERTS 10]

A. NO.
Q. YOU WERE MERELY INVOLVED IN THE EXECUTION OF THE POLICY BY THE CHARLESTON CITY POLICE DEPARTMENT?
A. CORRECT.
Q. ARE YOU AWARE OF ANY OTHER POLICE DEPARTMENT WITHIN THIS

GEOGRAPHIC AREA THAT WAS INVOLVED IN THE EXECUTION OF THE INTERAGENCY POLICY? COUNTY, SHERIFF, COUNTY POLICE, POLICE DEPARTMENT, SLED?

A. WELL THE SHERIFF'S DEPARTMENT IN THE SENSE THAT THEY HOUSE PEOPLE UNABLE TO MAKE BOND. HOWEVER, AS FAR AS THE INVESTIGATION AND ARREST PROCESS, NO, I BELIEVE THE CHARLESTON POLICE DEPARTMENT WAS THE ONLY LAW ENFORCEMENT DIVISION.

YOU ARE AWARE OF WHAT WAS REQUIRED DURING THAT TIME PERIOD FOR A POLICE OFFICER TO MAKE AN ARREST, ARE YOU NOT?

A. YES, I BELIEVE THAT I WAS.

Q. AND DESCRIBE THAT FOR THE JURY, PLEASE.

A. PROBABLE CAUSE WAS THE STANDARD FOR ARREST. WHAT WOULD LEAD AN AVERAGE PERSON OF COMMON SENSE TO REASONABLY BELIEVE THAT A CRIME HAD BEEN COMMITTED OR WAS BEING COMMITTED IS THE DEFINITION.

Q. PROBABLE CAUSE WOULD NOT EXIST TO ARREST -

THE COURT: WAIT A MINUTE. WAIT A MINUTE NOW. WHAT DOES THAT HAVE TO DO WITH THIS CASE?

MR. WHERRY: PROBABLE CAUSE?

THE COURT: YES, SIR.

* * *

[ROBERTS 12]

SOMETHING PAGES.
MR. WHERRY: YES, SIR.
THE COURT: YOU DO ALLEGE A VIOLATION OF CONSTITUTIONAL RIGHTS BASED ON UNREASONABLE SEARCH AND SEIZURE?
MR. WHERRY: YES, SIR.
THE COURT: BUT I THOUGHT THAT THE THRUST OF THAT WAS TOWARDS THE UNREASONABLE SEARCH. I WAS NOT ON NOTICE THAT IT INVOLVED THE ARREST ITSELF AND, AGAIN, I JUST - WE HAVE GOT ENOUGH ISSUES IN THIS CASE RAISED BY THE PLEADINGS NOT TO HAVE ANY MORE BURDENING MY MIND AND THE JURY'S MIND. SO WE CAN LOOK AT THIS AND IF IT DOES CONTAIN ALLEGATIONS THAT ADDRESS THOSE ISSUES, WE CAN COME BACK. IN THE MEANTIME I'LL TRY TO LOOK AT IT, TOO.
MR. WHERRY: AND, YOUR HONOR, IT'S NOT A SIGNIFICANT POINT IN MY QUESTIONING OF THE CAPTAIN, SO I'LL MOVE ON.
Q. (BY MR. WHERRY, CONTINUING) CAPTAIN, YOU HAVE BEFORE YOU JOINT EXHIBIT NUMBER 1. THAT IS, SIR, A COPY OF THE OPERATIONAL GUIDELINES WHICH WERE WRITTEN BY YOU, BY YOUR HAND IN CONSULTATION WITH THE SOLICITOR'S OFFICE AND DISTRIBUTED TO THE DETECTIVE BUREAU OF THE CHARLESTON CITY POLICE DEPARTMENT,

FAIR?
A. YES.
Q. AND THAT, SIR - WELL, FIRST OF ALL, WHEN WAS THAT WRITTEN BY YOU? ABOUT.

[ROBERTS 13]

A. VERY CLOSE IN TIME TO THE DATE ON THE MEMORANDUM.
Q. WHICH IS?
A. 12, OCTOBER, 1989.
Q. BEFORE OCTOBER OF 1989, CAPTAIN, THERE WAS NO PROCEDURE WITHIN THE CHARLESTON CITY POLICE DEPARTMENT FOR HANDLING CASES LIKE THIS, WAS THERE?
A. NO.
Q. BECAUSE IN FACT BEFORE THAT TIME, CAPTAIN, THERE HAD NEVER BEEN ANY CASES LIKE THIS, HAD THERE?
A. NO.
Q. AND BEFORE THAT POINT IN TIME, CAPTAIN, TO YOUR KNOWLEDGE, NO ONE HAD BEEN ARRESTED FOR ABUSE OR NEGLECT OF THE CHILD BECAUSE THEY USED DRUGS WHILE PREGNANT; ISN'T THAT SO?
A. I WAS AWARE OF A POLICY SOMETHING SIMILAR TO THIS IN THE GREENVILLE OR SPARTANBURG AREA. I'M NOT CERTAIN FROM MY OWN MEMORY WHETHER IT PREDATES OUR POLICY OR CAME SHORTLY THEREAFTER. I DO RECALL IT THE SAME GENERAL TIME FRAME.

Q. I UNDERSTAND THAT. IN THE CHARLESTON CITY POLICE DEPARTMENT?
A. NO.
Q. THERE HAD NEVER BEEN ANYBODY ARRESTED FOR ABUSE OR NEGLECT OF A CHILD BECAUSE THEY USED CONTROLLED SUBSTANCES WHEN THEY WERE PREGNANT; ISN'T THAT FAIR?
A. YES, THAT'S FAIR.

[ROBERTS 14]

Q. AND THEREFORE, CAPTAIN, THE DRAFTING OF THAT GUIDELINE FOR, YOUR POLICE OFFICERS WAS NECESSARY, WASN'T IT?
A. I FELT IT WOULD BE BENEFICIAL, YES, SIR, TO PROVIDE SOME STRUCTURE IN CONTACT INFORMATION AND BACKGROUND.
Q. THOSE GUIDELINES FOR THE GUIDANCE OF YOUR OFFICERS WAS DRAFTED IN CONJUNCTION WITH THE SOLICITOR'S OFFICE, FAIR?
A. YES.
Q. YOU CONSULTED WITH THEM AND GOT THEIR ADVICE?
A. YES.
Q. AND THEIR ACQUIESCENCE IN YOUR GUIDELINES?
A. ACQUIESCENCE, APPROVAL, YES.
Q. AND SO WE UNDERSTAND, CAPTAIN, THE SOLICITOR'S OFFICE IS THE CHIEF LAW ENFORCEMENT OFFICER OF THE COUNTY; IS THAT CORRECT?

A. WELL, THE SHERIFF, THE SOLICITOR I'M NOT - IN A PURE LEGAL SENSE I DON'T KNOW HOW TO ANSWER THAT. I WOULD SAY THAT HE IS THE CHIEF PROSECUTOR IN THE COUNTY.

Q. WAS THERE CONSULTATION, CAPTAIN, WITH PERSONNEL AT MUSC CONCERNING THOSE GUIDELINES?

A. YES.

Q. AND THAT PERSON, IF THERE WAS CONSULTATION WITH, WAS SHIRLEY BROWN, CORRECT?

A. CORRECT.

Q. SHIRLEY BROWN WAS THE POINT PERSON AT MUSC FOR THE INTERAGENCY POLICY AS FAR AS YOU WERE CONCERNED, FAIR?

[ROBERTS 15]

A. SHE WAS OUR PRIMARY POINT OF CONTACT, YES.

Q. AND ALTHOUGH YOU WERE HER SUPERIOR, DETECTIVE WARING WAS THE POINT PERSON IN THE CHARLESTON CITY POLICE DEPARTMENT?

A. THAT'S FAIR.

Q. NOW, IN THE SECOND PARAGRAPH OF JOINT NUMBER 1, WHICH IS YOUR OPERATIONAL GUIDELINES, CORRECT ME IF I'M WRONG, CAPTAIN, BUT IT LISTS OR DESCRIBES THE DRUGS WHICH ARE NOT LEGAL DRUGS; IS THAT FAIR?

A. CORRECT. HEROIN, CRACK COCAINE, AMPHETAMINES ANY OTHER DRUGS ILLEGAL INGESTED BY THE PATIENT THAT THE MEDICAL

AUTHORITIES DEEM TO ENDANGER THE LIFE OF THE UNBORN CHILD,
YES, SIR.
Q. AT THAT TIME IN THE CITY OF CHARLESTON, THE STREET DRUGS THAT WERE GENERALLY AVAILABLE WERE HEROIN, POWDER COCAINE, CRACK COCAINE, MARIJUANA, TCP, ANGEL DUST, FAIR?
A. YES, IN GENERAL. I DON'T KNOW TO WHAT EXTENT EACH ONE WAS PRESENT. BUT, YES, IN GENERAL THAT'S CORRECT.
Q. IN YOUR ENTIRE RELATIONSHIP WITH - OH, LET ME WITHDRAW THAT. AND ARRESTS WERE GENERALLY MADE FOR POSSESSION OR DISTRIBUTION OF ALL OF THOSE DRUGS I JUST ASKED YOU ABOUT?
A. THOSE DRUGS AND OTHER CONTROLLED SUBSTANCES, YES.
Q. IN THE ENTIRE COURSE OF THE POLICY, THE INTERAGENCY POLICY, THERE WERE NO ARRESTS MADE, WERE THERE, FOR PREGNANT WOMEN FOR USE OF ANY DRUG WHILE PREGNANT EXCEPT CRACK COCAINE?
A. I'M NOT CERTAIN FROM PERSONAL KNOWLEDGE, BUT I WOULD SAY

[ROBERTS 16]

THAT CRACK COCAINE WAS CERTAINLY THE PREDOMINANT DRUG. IF THERE WAS ONE OR TWO OTHERS I COULDN'T SAY, BUT, YES, IN GENERAL, THAT'S CORRECT.
Q. AND I UNDERSTAND YOUR RELUCTANCE TO USE ABSOLUTES. ARE

YOU AWARE OF ANY ARRESTS FOR HEROIN, METHAMPHETAMINE, PCP, ANGEL DUST OR ANY OF THE OTHER DRUGS?

A. NO.

Q. NOW, THIS OPERATIONAL GUIDELINE WHICH YOU HAVE BEFORE YOU SPECIFICALLY REFERS TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, DOESN'T IT?

A. YES.

Q. NO ARRESTS WERE MADE AND THERE WAS NO POLICY, WAS THERE, AT SAINT FRANCIS HOSPITAL?

A. I HAD NO CONTACT WITH THAT HOSPITAL, NO.

Q. ROPER?

A. NO.

Q. TRIDENT?

A. NO.

Q. THERE WAS NOTHING ABOUT THOSE HOSPITALS THAT MADE CRACK COCAINE LEGAL, WAS THERE?

A. NO. TRIDENT IS NOT IN OUR JURISDICTION. ONE OF THE REASONS THAT WE WERE DIRECTLY INVOLVED WAS OUR AGREEMENT WITH THE MEDICAL UNIVERSITY ON THE MAJOR CRIME CASES AND ALSO THE FACT THAT IT WAS WITHIN OUR JURISDICTION, BUT NO, WERE WE INVOLVED IN ARRESTS AT OTHER HOSPITALS WITHIN THE CITY LIMITS

[ROBERTS 17]

NO.

Q. AND THERE WAS NOTHING ABOUT THOSE HOSPITALS, THE ONES

WITHIN THE CITY LIMITS THAT YOU KNOW OF THAT MADE THE USE OF CRACK COCAINE OR COCAINE DURING PREGNANCY LEGAL, WAS THERE?

A. NO.

Q. IS IT FAIR TO SAY THE REASON THAT YOU DEALT ONLY WITH THE MEDICAL UNIVERSITY HOSPITAL WAS BECAUSE THAT WAS THE HOSPITAL THAT YOU HAD THE WORKING ALLIANCE WITH SHIRLEY BROWN AND THE OTHER STAFF MEMBERS?

A. THAT WOULD BE THE BEST OF MY KNOWLEDGE, YES.

Q. AND, CAPTAIN, AT VIRTUALLY EVERY STEP ALONG THE WAY IN THIS PROCESS THAT EVENTUALLY LED TO THE ARREST OF A PREGNANT WOMEN THERE WAS INTERACTION BETWEEN THE POLICE DEPARTMENT AND THE HOSPITAL, WASN'T THERE?

A. YES, THERE WAS DEFINITELY INTERACTION.

Q. IN FACT, CAPTAIN, YOU ATTENDED A MEETING, DIDN'T YOU, WITH THE HEAD OF THE CHARLESTON CITY POLICE DEPARTMENT'S LABORATORY, THIS QUESTION IS NOT COMING OUT WELL. LET ME START OUT AGAIN.

THERE WAS A MEETING, WASN'T THERE, WHICH WAS ATTENDED BY, AT LEAST AMONG OTHERS, YOU, THE HEAD OF YOUR LABORATORY, SHIRLEY BROWN, THE HEAD OF THE MEDICAL UNIVERSITY LABORATORY?

A. YES. AS FAR AS THE HEAD OF THE MEDICAL UNIVERSITY

LABORATORY, THAT WAS TO THE BEST OF MY MEMORY THAT HE MAY HAVE

[ROBERTS 18]

ATTENDED. THE OTHER THREE I'M SURE WERE PRESENT AT THAT MEETING.

Q. AND THE PURPOSE OF THAT MEETING, AT LEAST IN PART, WAS TO GET DOWN PAT THIS CHAIN OF EVIDENCE THING, RIGHT?

A. THAT WAS A CONCERN OF MINE. I INVITED OUR LAB DIRECTOR, BECAUSE I WAS COGNIZANT OF THE FACT THAT ANY ARRESTS COULD ULTIMATELY END UP IN A TRIAL. AND I WAS CONCERNED THAT WE AT LEAST CONSIDER THAT AS A FACTOR WHEN WE WENT THROUGH THIS PROCESS.

Q. SURE.

A. AND SO AT MY INVITATION MS. FLYNN THE LAB DIRECTOR ATTENDED, BECAUSE I AT LEAST WANTED TO RAISE THE ISSUE, YES.

Q. AND CHAIN OF EVIDENCE IS A CRIMINAL FORENSIC PROBLEM, RIGHT?

A. YES, SIR.

Q. CAPTAIN, SHOWING YOU WHAT HAS BEEN MARKED PLAINTIFFS' EXHIBIT 22 FOR IDENTIFICATION, THAT, SIR, IS THE MEMORANDA THAT YOU SENT AROUND SCHEDULING THIS MEETING IN WHICH THE CONCEPT OF CHAIN OF EVIDENCE WAS TO BE DISCUSSED, RIGHT?

A. NO, I DIDN'T SEND THIS MEMO.

Q. I'M SORRY, I MISSPOKE. THE PEOPLE AT THE MEDICAL UNIVERSITY SENT THE MEMORANDUM TO YOU, RIGHT?
A. THAT'S CORRECT. BUT - THEIR - I DON'T KNOW WHAT THEIR AGENDA WAS. I HAVE TO GO FROM THE MEMORANDA, IT SAYS URINE TESTS, EXPECTANT MOTHERS. I HAD A CONCERN ABOUT CHAIN OF

* * *

[ROBERTS 21]

AGGRAVATED CIRCUMSTANCES - I BELIEVE THAT'S A REFERENCE TO 1-A. THE PATIENT HAS TESTED POSITIVE FOR DRUG ABUSE AND AFTER COUNSELING AND WARNING AND HAS FAILED TO KEEP SCHEDULING APPOINTMENTS FOR PRENATAL CARE.
Q. OKAY. AND IN ANY EVENT, CAPTAIN?
A. YES, SIR.
Q. IF A WOMEN WENT INTO THE HOSPITAL AND HAD A BABY AND AFTER THE BIRTH THERE WAS A POSITIVE UDS, A POSITIVE DRUG SCREEN, THERE WOULD BE A REPORT MADE TO YOU AND THERE WOULD BE AN ARREST; IS THAT RIGHT?
A. AT THE INCEPTION OF THE POLICY I BELIEVE THAT TO BE CORRECT, YES.
Q. WHEN DID THAT CHANGE, DO YOU REMEMBER?
A. I KNOW IT CHANGED. I DON'T RECALL EXACTLY WHEN. I BELIEVE IT WAS EARLY ON IN THE POLICY, BUT PRECISELY WHEN, I

DON'T REMEMBER.
Q. CAPTAIN, DO YOU HAVE - YOU HAVE NO DETECTIVE, DETECTIVE WARING OR OTHERWISE, STATIONED AT THE HOSPITAL TO INVESTIGATE PEOPLE WHO CAME IN, DID YOU?
A. WAS SHE STATIONED THERE?
Q. YES.
A. NO, SIR.
Q. IN FACT, THE ONLY WAY THAT YOUR DEPARTMENT WOULD KNOW OF A POSITIVE DRUG SCREEN OR OF A POSITIVE ADMISSION OF THE USE OF COCAINE WOULD BE THAT YOU WOULD GET A CONTACT FROM SHIRLEY

[ROBERTS 22]

BROWN OR SOMEONE LIKE HER FROM THE HOSPITAL; IS THAT FAIR?
A. THAT IS FAIR.
Q. AND IN FACT IT WAS THE UNDERSTANDING AMONG THE AGENCIES INVOLVED THAT SHIRLEY BROWN OR HER EQUAL WAS SUPPOSED TO NOTIFY YOU WHEN SOMEBODY CAME IN POSITIVE; IS THAT RIGHT?
A. IT'S MY UNDERSTANDING. I DON'T KNOW SPECIFICALLY WHAT PEOPLE AT THE MEDICAL UNIVERSITY WERE TOLD, BUT, YES, THAT WAS MY UNDERSTANDING OF THE POLICY. THOSE THAT MET THE CRITERIA, THE GUIDELINES, THAT INFORMATION WAS TO BE PROVIDED TO THE POLICE DEPARTMENT.
Q. AND IT WAS THE POSITION OF THE CHARLESTON CITY POLICE

DEPARTMENT THAT YOU ENCOURAGED THAT CONDUCT, THAT REPORTING BY MUSC STAFF?
A. SIR, I DON'T KNOW ABOUT ENCOURAGED. I KNOW THAT I WAS PART OF EXECUTING THE POLICY THAT HAD BEEN DECIDED UPON.
Q. WELL, CHIEF RUEBEN GREENBERG WAS THE CHIEF OF YOUR DEPARTMENT?
A. YES, HE WAS.
Q. AND IS IT NOT CORRECT THAT CHIEF GREENBERG, ON BEHALF OF THE DEPARTMENT, WAS IN - WAS IN SUPPORT OF THIS POLICY AND ENCOURAGED THIS POLICY?
A. I BELIEVE THAT HE DID, YES.
Q. WOULD IT THEN BE FAIR TO SAY THAT THE CHARLESTON CITY POLICE DEPARTMENT WAS IN SUPPORT OF AND ENCOURAGED THE REPORTING BY THE MEDICAL PERSONNEL TO YOUR DEPARTMENT?

[ROBERTS 23]

A. YES.
Q. YOU UNDERSTAND, DON'T YOU, CAPTAIN, THAT WHEN A LAW ENFORCEMENT AGENCY IMPLIES OR ENCOURAGES A NON-LAW ENFORCEMENT PERSONNEL TO PERFORM WHAT WOULD NORMALLY BE POLICE FUNCTION, CERTAIN THINGS ATTACH TO THAT RELATIONSHIP?
MS. SHOWERS: I OBJECT.
MR. WHERRY: I WITHDRAW THE QUESTION.

Q. (BY MR. WHERRY, CONTINUING) THE COMPLAINTS, BY THE WAY, THAT WERE FILED BY SHIRLEY BROWN OR SOMEONE LIKE HER AT THE HOSPITAL WERE FILED BY TELEPHONE, WEREN'T THEY?
A. INITIALLY, YES.
Q. AND IN FACT IF THE PERSON TO BE ARRESTED WAS A PATIENT AT THE HOSPITAL, THE POLICE DEPARTMENT WAS NOTIFIED WHEN THEY WERE TO BE DISCHARGED?
A. AT SOME POINT, YES, WE LEARNED WHEN THEY WOULD BE DISCHARGED.
Q. AND THAT WAS AS A MATTER OF CONVENIENCE SO YOU WOULDN'T HAVE TO GO SCHLEPPING ALL OVER THE CITY TRYING TO FIND THESE PEOPLE YOU KNEW WHERE THEY WERE RIGHT?
MS. SHOWERS: I AGAIN OBJECT, THIS WITNESS SAID THAT HE WASN'T INVOLVED IN ANY OF THE ARRESTS.
MR. WHERRY: LET ME LAY A BETTER FOUNDATION.
THE COURT: OKAY.
Q. (BY MR. WHERRY, CONTINUING) YOU, SIR, WERE THE DIRECT .. SUPERVISOR OF THE DETECTIVE DIVISION THAT WAS USED TO ARREST

[ROBERTS 24]

THE WOMEN, WEREN'T YOU?
A. YES.
Q. YOU WERE AWARE AS A SUPERVISOR OF HOW THE OPERATIONS

WENT, WEREN'T YOU?
A. YES.
Q. YOU WERE AWARE OF EACH OF THE - NOT WHICH CAR WAS USED, BUT EACH OF THE DETAILS OF THE PROCEDURE, WEREN'T YOU?
A. YES, I DON'T KNOW EXACTLY WHAT WENT ON IN EVERY INVESTIGATION AND EVERY ARREST, BUT, YES, I WAS IN CHARGE AND I HAD A GENERAL FAMILIARITY WITH THE OPERATIONS ON A REGULAR BASIS.
Q. AND THE REASON THAT YOU WERE NOTIFIED AS TO WHEN THE DISCHARGE WOULD BE WAS FOR THE CONVENIENCE OF THE POLICE DEPARTMENT SO YOU KNEW WHERE THE DEFENDANT WAS, FAIR?
A. YES, OPERATIONAL EFFICIENCY AND ACTING AS SOON AS POSSIBLE WITHIN RECEIPT OF A COMPLAINT.
Q. SO THAT WAS NOT SOMETHING THAT HAPPENED JUST BY ACCIDENT, THAT WAS A DESIGN THAT WAS IN THE PROGRAM?
A YES.
Q. WHEN YOUR DETECTIVE RECEIVED THE NOTIFICATION FROM SHIRLEY BROWN AND WENT TO THE HOSPITAL, WERE THERE THINGS THAT YOU REQUIRED AS A SUPERVISOR BE OBTAINED FROM THE HOSPITAL AS WELL AS THE BODY OF THE SUSPECT?
A. WELL, CLEARLY I WANTED THE INFORMATION THAT CONSTITUTED PROBABLE CAUSE AND OTHER INFORMATION RELATIVE TO THE

[ROBERTS 25]

INVESTIGATION. THAT COULD TAKE IN A NUMBER OF VARIABLES.
Q. SURE. ROUTINELY THE INFORMATION THAT COMPRISED PROBABLE CAUSE WAS A COPY OF THE UDS, THE URINE DRUG SCREEN, FAIR?
A. I THINK THAT WOULD BE A PRIMARY FACTOR, YES. WHETHER IT WOULD BE VERBALLY OR IN WRITING, BUT INFORMATION RECEIVED.
Q. AND THAT INFORMATION ABOUT THE POSITIVE URINE DRUG SCREEN WAS RECEIVED BY YOU FROM THE HOSPITAL? I DON'T MEAN YOU PERSONALLY, YOU PLURAL.
A. AS IN THE INVESTIGATING OFFICER OR DETECTIVE ASSIGNED?
Q. YES.
A. YES.
Q. IN ADDITION, ANY STATEMENTS MADE TO THE HOSPITAL PERSONNEL BY THE PATIENT/SUSPECT, WERE RECEIVED BY YOUR 13, PER INVESTIGATING OFFICER, ISN'T THAT SO?
MS. SHOWERS: AGAIN I OBJECT. HE WASN'T THERE. THE OFFICER WHO TOOK THE STATEMENTS WOULD BE THE ONES TO TESTIFY TO THIS.
THE COURT: GO AHEAD.
MR. WHERRY: THANK YOU.
Q. (BY MR. WHERRY, CONTINUING) YOUR ANSWER?
A. YES, THAT WAS MY DIRECTIVE, ANY INFORMATION THAT BORE ON THE COMMISSION OF THE OFFENSE, BE IT VERBAL STATEMENTS BY THE

SUSPECT OR ANY OTHER, YES.
Q. THERE CAME A POINT IN TIME, DIDN'T THERE, CAPTAIN, WHEN YOU RECEIVED A LETTER- LET ME WITHDRAW THAT.

[ROBERTS 26]

WHILE MR. HOOD AND MS. SHOWERS ARE LOOKING AT THAT,
IN THE EARLY STAGES OF THIS POLICY NO SEARCH WARRANTS WERE USED TO GET THE MEDICAL RECORDS, WERE THEY?
A. THE VERY EARLY STAGES I DON'T - I DON'T BELIEVE THAT THERE WERE. I KNOW THAT BECAME A CONCERN EARLY ON. PRECISELY WHEN I DON'T RECALL. I KNOW THERE IS SOME MEMORANDUM REGARDING THAT ISSUE, BUT YES.
Q. A SEARCH WARRANT, JUST IN GENERAL TERMS, IS APPROVAL BY A COURT TO SEARCH A PERSON OR THEIR HOUSE OR THEIR PAPERS OR THEIR PROPERTY, FAIR?
A. FAIR.
Q. AND THAT APPROVAL BY THE COURT, AS YOU UNDERSTAND IT, IS BASED UPON A FINDING OF PROBABLE CAUSE?
A. THAT'S CORRECT.
Q. ALTHOUGH IN A DIFFERENT CONTEXT, THE SAME KIND OF PROBABLE CAUSE THAT YOU WERE TALKING ABOUT, TO ARREST SOMEONE"?
A. CORRECT. PROBABLE CAUSE IS REQUIRED, BE IT A SEARCH WARRANT OR AN ARREST.

Q. SIR, LET ME SHOW YOU WHAT HAS BEEN MARKED PLAINTIFF'S EXHIBIT 13 FOR IDENTIFICATION, AND ASK WHETHER YOU RECOGNIZE THAT DOCUMENT?
A. YES, I DO.
Q. AND IS THAT DOCUMENT ADDRESSED TO YOU?
A. YES, IT IS.
Q. IS THAT DOCUMENT FROM THE SOLICITOR'S OFFICE?

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[ROBERTS 36]

MS. SHOWERS: YOUR HONOR, THIS WASN'T GIVEN TO US AS A TRIAL EXHIBIT UNTIL JUST THIS MINUTE. WE'RE TRYING TO LOOK THROUGH.

THE COURT: OKAY.

Q. (BY MR. WHERRY, CONTINUING) DETECTIVE - I'M SORRY, CAPTAIN, I JUST DEMOTED YOU. CAPTAIN, LET ME SHOW YOU WHAT WE HAVE MARKED 228-B FOR IDENTIFICATION. AND REFER YOU TO THE NEXT TO THE LAST PAGE A FORM ENTITLED SUPPLEMENTARY REPORT WHERE IT SAYS DATE OF WARRANT. DO YOU SEE THAT?
A. ARE YOU REFERRING TO -
Q. DATE OF WARRANT?
A. RIGHT.
Q. WARRANT NUMBER?
A. YES, THAT REFERS TO AN ARREST WARRANT.
Q. THAT WAS MY POINT. WHEN THE REPORT SAYS DATE OF WARRANT

AND WARRANT NUMBER, THAT REFERS TO AN ARREST WARRANT NOT A SEARCH WARRANT, FAIR?
A. YES.
Q. AND IF THERE WAS A SEARCH WARRANT ISSUED, AND EXCEPT AN ERROR BY THE OFFICER, ONE WOULD EXPECT TO SEE IN THERE AN "I APPLIED FOR A SEARCH WARRANT BEFORE JUDGE SO AND SO ON SUCH
Q. AND SUCH A DATE. THE WARRANT WAS ISSUED, WE EXECUTED IT AT THIS TIME, AND THIS IS WHAT WE GOT," SOMETHING ABOUT LIKE THAT?
A. I WOULD EXPECT TO SEE SOME REFERENCE TO IT, YES.

* * *

[ROBERTS 38]

MR. WHERRY: YOUR HONOR, IT CAME FROM THE DEFENDANTS' -
THE COURT: SHE SAID THAT SHE HASN'T BEEN ABLE TO LOOK AT IT. IT OBVIOUSLY IS OFFERED AS A BUSINESS RECORD OF THE CHARLESTON POLICE DEPARTMENT. IT HAS TO BE OFFERED THROUGH THE CUSTODIAN. HE IS NOT THE CUSTODIAN. I MEAN -
I MEAN, WHEN HE RECOGNIZES IT AS - HE IS READING THROUGH IT RIGHT NOW. AND LET'S SAY HE SAYS THAT IT'S CRYSTAL FERGUSON'S FILE. IF I READ THROUGH IT RIGHT NOW I WOULD SAY

THAT IT LOOKS LIKE THAT FILE, TOO, BUT THE PERSON THAT PUTS IT IN HAS TO BE THE CUSTODIAN OR SOMEBODY THAT KNOWS THAT FILE. HAVE YOU EVER SEEN IT BEFORE?

THE WITNESS: HAVE I SEEN THIS, JUDGE?

THE COURT: YES.

THE WITNESS: NO, SIR, I HAVE NOT.

MR. WHERRY: JUDGE, I WILL CALL THE CUSTODIAN. NO PROBLEM.

Q. (BY MR. WHERRY, CONTINUING) AS THE SUPERVISOR OF THE DETECTIVE BUREAU, DO YOU KNOW WHO MADE THE DECISION AS TO WHAT WOMEN WERE GOING TO BE ARRESTED?

A. DO I KNOW WHO MADE THE DECISION?

Q. YES.

A. MADE BY THE DETECTIVE ON THE SCENE AFTER THEY HAD ASSESSED THE INFORMATION.

Q. AND THE ON THE SCENE MEANS AT THE HOSPITAL AFTER THE

[ROBERTS 39]

INFORMATION WAS RECEIVED FROM SHIRLEY BROWN?

A. YES, IN MOST INSTANCES IT WOULD REFER TO DETECTIVE WARING.

Q. BEFORE A PERSON WOULD BE ARRESTED FROM THE HOSPITAL, YOU HAD A CONCERN, AND YOU ADDRESSED THAT CONCERN THAT THEY WERE

PHYSICALLY CAPABLE OF BEING HOUSED IN THE JAIL; ISN'T THAT RIGHT?

A. YES. THAT WAS A POTENTIAL OF ANYONE THAT IS CHARGED IF THEY WERE UNABLE TO MAKE BOND.

Q. AND YOU WANTED THE ASSURANCE FROM THE HOSPITAL BEFORE YOU WOULD AUTHORIZE YOUR DETECTIVES TO ARREST A WOMEN THAT THEIR PHYSICAL CONDITION WAS SUCH THAT THEY COULD BE SAFELY AND MEDICALLY HOUSED, FAIR?

A. FAIR.

Q. SIR, I TAKE IT THEN THAT YOU INSISTED THAT THE HOSPITAL GIVE DETECTIVE WARING SOME PIECE OF PAPER, SOME DOCUMENT, SOMETHING THAT SAID THIS WOMAN'S HEALTH IS OKAY TO LOCK UP?

A. IN SHORT, THAT'S MY MEMORY OF IT THAT WE HAD SOME - A WRITTEN DOCUMENTATION REGARDING THE FACT THAT THEY COULD BE HOUSED IN THE JAIL FACILITY.

WHAT WRITTEN DOCUMENTATION? WHAT DID IT LOOK LIKE? WHAT WAS IT CALLED?

A. I NEVER SAW THEM PERSONALLY.

Q. DO YOU KNOW ANYONE WHO HAS EVER SEEN IT? THAT DOCUMENT?

A. I WOULD - I CAN ONLY REFER YOU TO DETECTIVE WARING.

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[ROBERTS 47]

VARIOUS MATERIALS ASSOCIATED WITH THIS CASE, I HAD SEEN AN

AMENDED COPY.
Q. WHAT DOES THAT SAY?
A. SECTION C, SIR?
Q. THE AMENDED COPY?
A. I DO NOT HAVE THAT HERE IN WHAT YOU PROVIDED ME, BUT I HAVE SEEN AN AMENDED COPY.
Q. HAVE YOU PROVIDED THAT TO MR. HOOD?
A. I DON'T KNOW THAT IT CAME FROM ME, SIR. I BELIEVE IT WAS OBTAINED FROM SOME OTHER SOURCE.
Q. THE PURPOSE OF THE POLICY, AS I UNDERSTAND IT - WELL, YOU TELL ME WHETHER I'M CORRECT, WAS TO PROTECT THE UNBORN CHILDREN; IS THAT CORRECT?
A. YES, SIR.
Q. WAS THERE ANYTHING ABOUT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA THAT MADE THAT NEED TO PROTECT THE UNBORN CHILDREN MORE EXISTENT THERE THAN AT THE OTHER HOSPITALS WITHIN YOUR JURISDICTION?
MS. SHOWERS: YOUR HONOR, I OBJECT ON THE GROUND OF RELEVANCE.
MR. WHERRY: MAY I BE HEARD?
THE COURT: I'LL PERMIT HIM TO ANSWER THAT IF HE KNOWS THE ANSWER.
A. I DON'T KNOW.
Q. SO THE DECISION TO ENFORCE THIS - THESE LAWS ONLY AT

[ROBERTS 48]

MUSC WAS NOT A DECISION MADE BY YOU?

A. I ACTED ON THE INFORMATION I RECEIVED. HAD I RECEIVED IT FROM SOMEONE ELSE I WOULD HAVE ACTED ON IT. I NEVER DID, NO, SIR.

Q. SIR, WAS THERE A - WAS THERE A LOG OR A SYSTEM KEPT AT CHARLESTON CITY POLICE DEPARTMENT WITH RESPECT TO THE INTERAGENCY POLICY OF THOSE PEOPLE ARRESTED PURSUANT TO THE POLICY?

A. I KEPT A LOG. IT WAS A MANAGEMENT TOOL FOR MYSELF THAT WAS SEPARATE AND APART FROM THE RECORD SYSTEM IN THE POLICE DEPARTMENT, AND IT ASSISTED ME IN THE OVERSIGHT OF THE DETECTIVE DIVISION. YES, THERE WAS A LOG AND THERE WAS A AS YOU - IF YOU PROFFER A CHAPTER OR SECTION WERE THESE CASES WERE NOTED.

Q. AND IT WAS NECESSARY TO CREATE THAT LOG OR THAT SECTION, WASN'T IT, BECAUSE CASES OF THIS NATURE, CASES OF THIS CLARIFICATION DIDN'T EXIST BEFORE THE POLICY, ISN'T THAT SO?

A. YES, THAT'S CORRECT.

Q. NOW, CAPTAIN, GOING BACK TO YOUR DIRECTIVE, YOUR OPERATIONAL GUIDELINES?

A. YES.

Q. JOINT EXHIBIT NUMBER 1?

A. YES.

Q. ON PAGE, I GUESS PAGE 2, UNDER EVIDENCE, SUBPARAGRAPH A, DO YOU SEE THAT?

[ROBERTS 49]

A. UNDER EVIDENCE?
Q. YES. I'M SORRY. CHARGES TO BE FILED?
A. UNDER.
Q. PAGE 2?
A. YES.
Q. SUBPARAGRAPH A UNDER CHARGES TO BE FILED?
A. YES, SIR.
Q. THAT INDICATES, DOES IT NOT, IF PREGNANCY IS 27 WEEKS OR LESS, THE CHARGE SHOULD BE POSSESSION OF BLANK, MEANING WHAT DRUG IS TO BE FILLED IN THERE, AND THE SOUTH CAROLINA STATUTORY SECTION; IS THAT RIGHT?
A. YES, SIR.
Q. IN YOUR OPERATIONAL GUIDELINES YOU CITE A NUMBER OF STATUTORY SECTIONS AND CRIMES WITH WHICH TO CHARGE THE PEOPLE. ON PAGE 2 AND THEN OVER ON PAGE 3; IS THAT RIGHT?
A. YES.
Q. CHILD ABUSE IS NOT ONE OF THE STATUTES, IS IT?
A. ON PAGE 3-C, UNLAWFUL NEGLECT OF THE CHILD.
Q. AND NEGLECT YOU EQUATE WITH THE ABUSE OF THAT CHILD?
A. WELL, I'M GOING TO - I HAVE TO GET THE STATUTE. I KNOW WE FREQUENTLY REFER, I'M NOT SPEAKING OF THE STATUTE, BUT WE FREQUENTLY REFER TO ABUSE AND NEGLECT OF CHILDREN AND I DON'T

KNOW IF THIS WORDING ABUSE WAS LEFT OUT BY ME OR WHETHER THAT CODE SECTION SPECIFICALLY RELATES TO NEGLECT.

Q. ONE OF THE THINGS THAT YOU SUGGEST IN YOUR OPERATIONAL

[ROBERTS 50]

GUIDELINES THAT THE SUSPECT BE CHARGED WITH IS WHAT WE IN THE LEGAL PROFESSION CALL SIMPLE POSSESSION, RIGHT?

A. YES, POSSESSION OF. YES.

Q. POSSESSION OF BLANK, COCAINE, HEROIN?

A. CORRECT.

Q. SIR, IN YOUR ASSOCIATION WITH THE INTERAGENCY POLICY, IN YOUR SUPERVISORY CAPACITY OVER THE DETECTIVE BUREAU, DURING THE PERIOD OF THIS POLICY, WAS THERE ANY MALE HUMAN BEING ARRESTED AND CHARGED WITH SIMPLE POSSESSION WHEN THEIR URINE OR OTHER TESTS AT MUSC CAME UP POSITIVE?

A. MALE.

Q. MALE HUMAN BEINGS?

A. NO.

Q. AND THAT ASSUMING THAT THESE PLAINTIFFS COULD HAVE BEEN CHARGED WITH POSSESSION, AS YOUR GUIDELINES SAY, THAT IS ONE OF THE THINGS THAT THEY SAY, ISN'T IT? YOU CAN CHARGE THEM WITH POSSESSION?

A. YES.

Q. ASSUMING THE WOMEN COULD BE CHARGED WITH POSSESSION, WHY WOULDN'T THE MEN BE CHARGED WITH POSSESSION?

MS. SHOWERS: I OBJECT ON THE GROUND OF RELEVANCE. AND ALSO HE HASN'T ESTABLISHED THAT THIS WITNESS HAD CONTACT WITH ANY OTHER PATIENTS OR ACCESS TO RECORDS OR REPORTS OTHER THAN UNDER THIS POLICY.

MR. WHERRY: ON THE RELEVANCE ISSUE, MAY I BE

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[ROBERTS 59]

PROMOTED TO CAPTAIN, DETECTIVE DIVISION COMMANDER, AND I CONTINUED THOSE RESPONSIBILITIES AND ADDITIONAL RESPONSIBILITIES AS FAR AS OVERSIGHT OF OTHER FELONY INVESTIGATIONS. IN AUGUST OF 1994 CHIEF GREENBERG ASKED ME TO RETURN TO THE DEPARTMENT IN AN ADVISORY CAPACITY AND ASSIST IN THE HOMICIDE INVESTIGATION. SO AFTER MY RETIREMENT I DID RETURN. AND I PRESENTLY SERVE THREE DAYS A WEEK WITH THE DEPARTMENT ON HOMICIDE INVESTIGATIONS. I ALSO ASSIST THE STATE ATTORNEY GENERAL'S OFFICE IN MEDICAID FRAUD INVESTIGATION ON A PART-TIME BASIS.

Q. CAPTAIN ROBERTS, YOU TESTIFIED EARLIER THAT YOU WERE

INVOLVED WITH THE INTERAGENCY POLICY IMPLEMENTATION; IS THAT CORRECT?
A. YES.
Q. AND SO YOU WERE FAMILIAR WITH THE PROCESS OF THE INTERAGENCY POLICY?
MR. WHERRY: OBJECTION, LEADING.
Q. (BY MS. SHOWERS, CONTINUING) ARE YOU FAMILIAR WITH THE PROCESS OF THE INTERAGENCY POLICY, CAPTAIN?
A. YES.
Q. IT'S ALREADY BEEN MARKED INTO EVIDENCE NUMBER 156, HOW THE POLICY WORKED. CAPTAIN, IF YOU COULD STEP DOWN HERE AND RUN THROUGH THIS WITH ME, PLEASE. NUMBER 1 INDICATES THAT A GENERAL CONCEPT FORM WAS SIGNED AT ADMISSION TO MUSC; IS THAT WHAT THAT SAYS?

[ROBERTS 60]

A. YES.
Q. WERE THE POLICE INVOLVED AT ANYTIME IN GETTING THAT CONSENT FORM?
A. NO.
Q. ALL RIGHT. AND THEN A VIDEO WAS REVIEWED AND LETTER WAS SIGNED BY THE PATIENT; IS THAT WHAT NUMBER 2 SAYS?
A. YES, IT IS.
Q. WERE THE POLICE INVOLVED WITH THAT VIDEO OR GETTING ANY LETTERS SIGNED TO MUSC?

A. NO.
Q. IF CRITERIA WERE MET, NUMBER 3, A URINE DRUG SCREEN WAS PERFORMED. THAT'S WHAT NUMBER 3 SAYS; IS THAT RIGHT?
A. YES, A UDS PERFORMED.
Q. DID THE POLICE HAVE ANY INPUT INTO WHAT TYPE OF CRITERIA WAS USED FOR THE URINE DRUG SCREEN?
A. NO.
Q. WAS THAT MEDICAL CRITERIA?
A. TO THE BEST OF MY KNOWLEDGE, YES.
Q. IF THE URINE DRUG SCREEN WAS POSITIVE, LET ME FIRST ASK YOU, WERE YOU REPORTED ABOUT A POSITIVE DRUG SCREEN - STRIKE THAT.
WERE YOU REPORTED THAT A DRUG SCREEN WAS DONE?
A. ON EVERY PATIENT, NO.
Q. AND IF A URINE DRUG SCREEN WAS POSITIVE, NUMBER 4, A VIDEO WAS SHOWN AGAIN. DID YOUR DEPARTMENT HAVE ANY INPUT

[ROBERTS 61]

INTO THE VIDEO BEING SHOWN HERE?
A. NO.
Q. AND THE CASE MANAGER, PART B, WAS SHE EMPLOYED BY THE CHARLESTON POLICE DEPARTMENT?
A. NO.
Q. ALL RIGHT. AND THE HARMFUL EFFECTS OF THE COCAINE WERE EXPLAINED AND A HISTORY WAS TAKEN. NUMBER 3, EXPLAIN THE

REQUIREMENT TO REPORT POSITIVE AND OFFER AMNESTY BY SOLICITOR.

FOUR, SOLICITOR LETTER REVIEWED AND SIGNED.

FIVE, APPOINTMENT MADE AT SUBSTANCE ABUSE TREATMENT CENTER FOR EVALUATION.

HAVE I READ THAT CORRECTLY?

A. YES.

Q. WAS THE POLICE DEPARTMENT INVOLVED AT ANY STEP ALONG THE WAY 1 THROUGH 5?

A. NO.

Q. NUMBER 5, IF THE PATIENT FAILED TO SUCCESSFULLY COMPLETE SUBSTANCE ABUSE TREATMENT, OR RETURN TO MUSC AND ANOTHER POSITIVE URINE DRUG SCREEN DURING PRENATAL CARE OR AT DELIVERY, THE OB CASE MANAGER WOULD REPORT TO THE POLICE AS THE REPORTING STATUTE REQUIRED. IS THAT NUMBER 5?

A. YES, IT IS.

Q. IS THAT YOUR UNDERSTANDING OF HOW THIS WORKED?

A. THAT'S MY UNDERSTANDING.

[ROBERTS 62]

Q. SO THE POLICE DID NOT GET INVOLVED UNTIL AFTER?

MR. WHERRY: OBJECTION, LEADING.

THE COURT: SUSTAINED.

Q. (BY MS. SHOWERS, CONTINUING) DID THE POLICE GET INVOLVED

IN ANY OF THESE STEPS PRIOR TO NUMBER 5?
A. NO.
Q. THANK YOU. YOU WERE INVOLVED WITH WRITING THE OPERATIONAL GUIDELINES THAT WERE PUT INTO EVIDENCE, CAPTAIN?
A. YES, MA'AM.
Q. DO YOU HAVE THOSE IN FRONT OF YOU?
A. YES, I DO.
Q. COULD YOU READ THE FIRST SENTENCE OF THE OPERATIONAL GUIDELINES?
A. YES. PREGNANT WOMEN ABUSING ILLEGAL DRUG IS A GROWING PROBLEM THAT POSES POTENTIALLY FATAL CONSEQUENCE FOR THE UNBORN CHILD. THIS THREAT TO HUMAN LIFE HAS NEGATED POLICE INTERVENTION IN THOSE INSTANCES WHERE PREGNANT FEMALES HAVE REJECTED OPPORTUNITY TO VOLUNTARILY OBTAIN ASSISTANCE IN STOPPING THEIR ABUSE OF DANGEROUS DRUGS.
Q. AND COULD YOU EXPLAIN TO THE JURY, FROM YOUR OPERATIONAL GUIDELINES AND YOUR UNDERSTANDING OF HOW THE POLICE INVOLVEMENT IN THIS POLICY WAS GOING TO WORK?
A. WELL, OUR INVOLVEMENT OCCURRED AFTER THE VARIOUS STEPS THAT WERE OUTLINED PREVIOUSLY HAD BEEN GONE THROUGH. WHEN THOSE STEPS HAD FAILED TO ACHIEVE THE DESIRED OBJECTIVE, WHICH

[ROBERTS 63]

WAS THE FEMALES STOPPING THE ABUSE OF ILLEGAL DRUGS, THEN THE POLICE WERE INVOLVED. IT BECAME A MATTER FOR CRIMINAL INVESTIGATION AND POTENTIALLY FOR PROSECUTION.

Q. LET ME GET TO YOU LEAN A LITTLE BIT FURTHER, I THINK THE JURY IS HAVING TROUBLE.

A. I APOLOGIZE.

THE COURT: IS THAT MICROPHONE ON?

DEPUTY CLERK: YES, SIR.

A. AFTER THE STEPS THAT WERE PREVIOUSLY OUTLINED HAD BEEN PERFORMED, IF IN FACT THE INDIVIDUALS HAD STILL FAILED TO STOP THEIR ABUSE OF ILLEGAL DRUGS, AT THAT POINT, I BELIEVE IT'S STEP NUMBER FIVE, THEN THE POLICE BECAME INVOLVED, IT BECAME A MATTER FOR CRIMINAL INVESTIGATION. WE RECEIVED INFORMATION FROM THE MEDICAL UNIVERSITY AND A DETECTIVE WAS DISPATCHED THERE TO MAKE AN ON SITE INVESTIGATION, COLLECT INFORMATION, MAKE DETERMINATIONS AS TO WHETHER OR NOT PROBABLE CAUSE EXISTED AND WHAT OTHER STEPS NEEDED TO BE TAKEN.

Q. BACKING UP, CAPTAIN, WHEN YOU RECEIVED A REPORT, IT WAS A

REPORT FROM A DOCTOR OR A NURSE AT THE MEDICAL UNIVERSITY; IS THAT CORRECT?
A. THAT'S CORRECT.
AND DID YOU HAVE EMPLOYEES IN THE POLICE DEPARTMENT WORKING AT THE HOSPITAL TO IMPLEMENT THIS POLICY?
NO.
SO WHEN YOU RECEIVED A REPORT, ONE OF YOUR DETECTIVES WAS

[ROBERTS 64]

DISPATCHED TO MUSC?
THE COURT: AGAIN.
MR. WHERRY: OBJECTION.
THE COURT: YOU'RE LEADING. LET'S DON'T LEAD ANY MORE.
MS. SHOWERS: ALL RIGHT.
Q. (BY MS. SHOWERS, CONTINUING) THE DETECTIVES THAT WORK IN YOUR DIVISION, ARE THEY UNIFORMED POLICE OFFICERS OR PLAIN CLOTHES?
A. THEY ARE PLAIN CLOTHES.
Q. AND YOU HAVE ALREADY TESTIFIED THAT DETECTIVE WARING WAS THE PRIMARY POINT PERSON FROM YOUR DEPARTMENT?
A. YES. DETECTIVE WARING HANDLED PROBABLY THE VAST MAJORITY OF THESE CASES.
Q. TO YOUR KNOWLEDGE DID DETECTIVE WARING WEAR PLAIN CLOTHES OR UNIFORM?
A. SHE WORE PLAIN CLOTHES.

Q. AND COULD YOU DESCRIBE FROM YOUR KNOWLEDGE WHAT SHE WOULD DO WHEN SHE WENT TO MUSC?

MR. WHERRY: OBJECTION, COMPETENCE. HE WASN'T THERE.

THE COURT: WELL YOU HAVE OBJECTED THROUGHOUT THE DIRECT EXAMINATION THAT HE WASN'T THERE AND DIDN'T KNOW, AND I HAVE BASICALLY SUSTAINED THOSE OBJECTIONS.

MS. SHOWERS: YES, SIR. I WAS JUST TRYING TO GET

[ROBERTS 65]

THROUGH THE OPERATIONAL GUIDELINES THAT HE DEVELOPED.

THE COURT: THAT WASN'T WHAT YOU ASKED HIM.

Q. (BY MS. SHOWERS, CONTINUING) ACCORDING TO YOUR OPERATIONAL GUIDELINES, CAPTAIN ROBERTS, WHAT WOULD DETECTIVE WARING DO WHEN SHE RESPONDED TO MUSC?

A. SHE WOULD RESPOND, MEET WITH THE APPROPRIATE INDIVIDUALS IN THE MEDICAL FIELD, OBTAIN AS MUCH INFORMATION AS POSSIBLE, AND AT THAT POINT MAKE A DETERMINATION AS TO WHETHER OR NOT PROBABLE CAUSE EXISTED. WHETHER OR NOT THERE WAS SUFFICIENT TIME TO OBTAIN AN ARREST WARRANT. AND THEN COORDINATE ACTIVITIES WITH THE SOLICITOR AND THE MEDICAL PERSONNEL IF IN

FACT A DECISION WAS MADE TO MOVE FORWARD WITH AN ARREST. AND SHE WAS PRIMARILY RESPONSIBLE, IN THOSE INSTANCES WHERE AN ARREST OCCURRED, SHE WAS PRIMARY RESPONSIBLE FOR THE PHYSICAL TAKING OF THAT SUBJECT INTO CUSTODY. SHE WAS THE ARRESTING OFFICER.

Q. AND TO THE BEST OF YOUR KNOWLEDGE WITH THE INTERAGENCY POLICY ARRESTS, WERE THE NORMAL ARRESTS PROCEDURES FOLLOWED?

MR. WHERRY: OBJECTION, COMPETENCE.

MS. SHOWERS: TO THE BEST OF HIS KNOWLEDGE I WOULD THINK AS HER SUPERIOR -

THE COURT: WELL, THAT'S PRECISELY THE GROUND THAT YOU OBJECTED ON EARLIER.

MS. SHOWERS: IF HE EVER BECAME AWARE OF ANY UNTOWARD EVENT DURING AN ARREST AS HER SUPERVISOR.

[ROBERTS 66]

THE COURT: IF HE ACTUALLY RECEIVED KNOWLEDGE HIMSELF, BUT THEN HOW IS HE GOING TO DO THAT EXCEPT SOMEONE TELLING HIM. JUST BECAUSE HE IS THE SUPERVISOR DOESN'T MAKE IT NON-HEARSAY.

MS. SHOWERS: WELL, IF A COMPLAINT WAS FILED WITH HIS DEPARTMENT ABOUT AN ARREST THAT WAS DONE INAPPROPRIATELY

THROUGH THE FORMAL COURSE OF BUSINESS, THAT WOULDN'T NECESSARILY BE HEARSAY.

THE COURT: RESTATE THE QUESTION.

Q. (BY MS. SHOWERS, CONTINUING) WERE YOU AWARE OF ANY NORMAL ARRESTS PROCEDURES NOT BEING FOLLOWED?

MR. WHERRY: AND THE OBJECTION IS BOTH RELEVANCE AND COMPETENCE AND HEARSAY, IF THE ANSWER IS YES. I DON'T KNOW WHAT THE ANSWER IS.

THE COURT: I'LL PERMIT HIM TO ANSWER IT BASED ON HIS OWN PERSONAL KNOWLEDGE.

A. WERE THESE ARRESTS HANDLED IN A ROUTINE MANNER?

Q. YES.

THE COURT: NO, THAT'S NOT THE QUESTION. THAT'S NOT THE QUESTION.

Q. (BY MS. SHOWERS, CONTINUING) WERE YOU AWARE OF ANY NORMAL ARRESTS PROCEDURES THAT WERE NOT FOLLOWED PURSUANT TO THE INTERAGENCY POLICY?

A. NO.

Q. DO YOUR POLICE OFFICERS GET TRAINING IN PROTECTING THE

* * *

[ROBERTS 72]

A. IT'S FAIR, AFTER I BELIEVE THE FIFTH STEP AT SOME POINT IT WAS BROUGHT TO OUR ATTENTION, YES.

Q. AND NUMBER -

A. DON'T BELIEVE THAT WE RECEIVED IT AT THAT JUNCTURE, IS ALL I'M SAYING.
Q. I UNDERSTAND. BUT THE TIME PERIOD WHEN THE HISTORY WAS TAKEN AND, YES, I USED DRUGS WHILE I WAS PREGNANT, AND A REPORT TO YOU MAY HAVE, IN MANY CIRCUMSTANCES, BEEN QUITE A SHORT PERIOD OF TIME, FAIR?
A. I DON'T - I'M AFRAID THAT I CAN'T ANSWER THAT WITH ANY CERTAINTY ABOUT THE TIME PERIODS AS A GENERAL RULE.
Q. OKAY. THE EXPLAINING OF THE REQUIREMENT TO REPORT THE POSITIVE UDS SCREEN AND THE OFFER OF AMNESTY, THE REPORTING THAT THE PATIENTS WERE TOLD ABOUT WAS A REPORTING TO YOU, WASN'T IT? THAT'S WHERE THE REPORT WENT, RIGHT, TO YOUR DEPARTMENT?
A. THE PATIENTS WERE TOLD THAT IF THEY VIOLATED THE POLICY AND REFERRAL AND DIVERSION PROGRAMS THEY WOULD BE REPORTED, YES.
IN THE EARLY STAGES THEY WERE TOLD THAT BECAUSE THEY TESTED POSITIVE IT WAS BEING REPORTED TO THE CHARLESTON CITY POLICE DEPARTMENT FOR THEM TO BE ARRESTED, FAIR?
A. AT THE INCEPTION, YES, SIR, IN SOME INSTANCES.
Q. AND THEN AS THE POLICY WENT ON, THEY WERE TOLD IF THEY

DIDN'T DO WHAT THEY WERE TOLD, BY SHIRLEY BROWN AND THE

[ROBERTS 73]

SUBSTANCE ABUSE PEOPLE, THAT YOUR DEPARTMENT WOULD COME OUT AND ARREST THEM, RIGHT?

A. YES, SIR.

Q. I THINK I JUST HAVE TWO MORE QUESTIONS.

YOUR GUIDELINES, THAT JOINT 1 THAT MS. SHOWERS QUESTIONED YOU ABOUT, MAKES NO REFERENCE, DOES IT, TO THE CHILD ABUSE REPORTING STATUTE?

MS. SHOWERS: OBJECTION, IMPROPER REDIRECT, YOUR HONOR.

THE COURT: YOU REFERRED TO WHAT AS NOT MAKING REFERENCE TO THE STATUTE?

MR. WHERRY: J 1, HIS OFFICIAL GUIDELINES ON MS. SHOWER'S QUESTIONS THAT WE WENT OVER ON CROSS.

THE COURT: GO AHEAD AND ANSWER THE QUESTION.

A. NO, THERE IS NO SPECIFIC REFERENCE IN MY MEMORANDA CONCERNING THAT STATUTE.

Q. ONE LAST QUESTION, CAPTAIN. YOUR DETECTIVE DIVISION AT THE TIME FRAME THAT WE'RE TALKING ABOUT, DID THEY ROUTINELY HANDLE CHILD ABUSE CASES? ABUSED CHILD, SHAKEN BABY SYNDROME, THAT KIND OF THING, SEXUAL ABUSE?

A. YES. YES.

MR. WHERRY: I HAVE NO FURTHER QUESTIONS.

THE COURT: THANK YOU, SIR. YOU'RE EXCUSED.

(TESTIMONY COMPLETE.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF THOMAS ROWLAND

[ROWLAND 610]

Q. AND HOW LONG HAVE YOU BEEN ON THE BOARD OF THE MEDICAL UNIVERSITY?
A. FOURTEEN YEARS.
Q. AND HOW DID YOU OBTAIN YOUR SEAT ON THE BOARD, DOCTOR?
A. I WAS ELECTED BY A JOINT SESSION OF THE LEGISLATURE.
Q. OKAY. AND AS YOU SERVED ON THE BOARD AT THE MEDICAL UNIVERSITY, TELL US THE PHILOSOPHY THAT YOU HAVE SEEN IMPLEMENTED THERE WITH REGARD TO DIVERSITY?
A. WE HAVE A DEPARTMENT OF DIVERSITY AND WE HAVE HAD A VERY ACTIVE DEPARTMENT AS LONG AS I CAN REMEMBER BEING ON THE BOARD. AND STILL HAVE IT. AND I THINK THE UNIVERSITY DOES A YEOMAN'S JOB OF NOT - NOT HAVING ANY RACIAL DISCRIMINATION, EXCEPT MAYBE IN A POSITIVE ROLE. WE IN FACT TAKE PROMISING BLACK STUDENTS AND HELP THEM GET INTO MEDICAL SCHOOL. HELP THEM GO THROUGH UNDERGRADUATE COURSES TO QUALIFY TO GET INTO MEDICAL SCHOOL.

Q. ALL RIGHT, SIR. NOW, THIS INTERAGENCY POLICY THAT IS INVOLVED IN THIS LAWSUIT, IN YOUR PROFESSIONAL OPINION, WAS THERE ANY INTENT BY THE ADOPTION OF THIS POLICY TO DISCRIMINATE AGAINST BLACK MOTHERS?
A. ABSOLUTELY NOT.
Q. DID THIS POLICY, AS IT WENT THROUGH THE SEQUENCE OF COMMITTEES AND STUDYING TO REACH APPROVAL AND IMPLEMENTATION, DIFFER IN ANY WAY FROM THE METHOD AND MODE BY WHICH OTHER POLICIES YOU HAVE SEEN ADOPTED AND APPROVED AT THE MEDICAL

[ROWLAND 611]

UNIVERSITY?
A. NO.
Q. WERE THERE ANY DEPARTURES FROM THE NORMAL PROCEDURES AND SEQUENCE OF EVENTS THAT LED UP TO THE ADOPTION OF THE INTERAGENCY POLICY?
A. NONE OF WHICH I'M AWARE OF.
Q. ARE YOU FAMILIAR WITH THE MANDATORY REQUIREMENTS IN SOUTH CAROLINA FOR THE REPORTING OF CHILD ABUSE?
A. I AM.
Q. HAS THE MEDICAL UNIVERSITY, IN YOUR EXPERIENCE, ALWAYS COMPLIED WITH AND ATTEMPTED TO COMPLY WITH THOSE REQUIREMENTS?
A. I HAVE ALWAYS ASSUMED THAT THEY DID.

Q. WAS THIS POLICY CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS AND STANDARDS AND PHILOSOPHY?
A. YOU MEAN THE POLICY OF THIS PARTICULAR PROGRAM?
Q. DEALING WITH THE COCAINE MOTHERS, YES, SIR?
A. I THINK IT WAS FORMULATED TO IMPROVE THE HEALTH OF THE MOTHERS AND TO PROTECT THE NEWBORN FROM THE COCAINE ABUSE.
Q. AND WERE YOU IN FAVOR OF THE GOAL OF THIS POLICY?
A. I WAS.
Q. AND AS AN OBSTETRICIAN, WHAT DID YOU SEE THE ~~GO~~AL OF THIS POLICY BEING?
A. THE GOAL OF THIS POLICY WAS TO PREVENT THE DAMAGE TO THE FETUS AND TO EDUCATE AND HOPEFULLY REHABILITATE THE MOTHER.
WE HAVE HEARD A LOT OF QUESTIONS ABOUT THE ALCOHOL AND TOBACCO

[ROWLAND 612]

ABUSE AND I WOULD ADMIT THAT THE ALCOHOL AND TOBACCO ABUSE ARE MORE COMMON, BUT THEY'RE ALSO NOT AS SEVERE. ALTHOUGH ALCOHOL ABUSE CAN BE VERY DAMAGING TO A CHILD IN A SEVERE ALCOHOLIC MOTHER, SOCIAL USE OF ALCOHOL MAY - MAY NOT HAVE ANY SIGNIFICANT EFFECT. AND YOU HAVE VERY LITTLE - LITTLE WAY TO DETERMINE HOW MUCH ALCOHOL A MOTHER IS DRINKING. COCAINE ON

THE OTHER HAND CAN KILL YOU WITH ONE DOSE, ESPECIALLY CRACK COCAINE.
Q. AND THE BABY?
A. AND THE BABY.
MR. HOOD: DR. ROWLAND. THANK YOU VERY MUCH FOR COMING TODAY.
THE COURT: CROSS-EXAMINATION.

CROSS-EXAMINATION

BY MR. WHERRY:
Q. DOCTOR, ALCOHOL CAN CAUSE PERMANENT MENTAL RETARDATION, CAN'T IT?
A. SURELY.
Q. COCAINE CAN'T, CAN IT?
A. IT CAN.
Q. IT'S YOUR POSITION, DOCTOR, THAT COCAINE CAUSES MENTAL RETARDATION?
A. IT'S MY POSITION THAT ALCOHOL AFFECTS -
Q. COCAINE -
A. AFFECTS THE DEVELOPMENT OF A CHILD'S ABILITY TO LEARN AND

[ROWLAND 613]

THINK.
Q. I THINK MY QUESTION TO YOU, DOCTOR, WAS: COCAINE DOESN'T CAUSE MENTAL RETARDATION, DOES IT?
A. I THINK IT DOES.
Q. IS THERE ANY MEDICAL LITERATURE, DOCTOR, UPON WHICH YOU BASE THE OPINION THAT YOU'VE JUST GIVEN?
A. I DIDN'T COME DOWN HERE PREPARED TO BE AN EXPERT ON

COCAINE.
Q. SO I TAKE IT THE ANSWER TO THE QUESTION IS NO?
A. NO.
Q. DOCTOR, YOU WOULD AGREE THAT THIS POLICY FOCUSED ON COCAINE?
A. I AGREE.
Q. DOCTOR, WOULD YOU AGREE THAT OPIATES, BARBITURATES, AMPHETAMINES, HALLUCINOGENS ALL CAUSE SEVERE PROBLEMS WITH PREGNANT WOMEN?
A. I WOULD.
Q. AND, DOCTOR, WOULD YOU AGREE THAT THE PREVALENCE OF COCAINE USE AMONG BLACK WOMEN IS GREATER THAN THE OTHER DRUGS THAT I HAVE MENTIONED?
A. I'M NOT SURE OF THAT FACT.
Q. DOCTOR, YOU SAID THAT YOU HAD A DEPARTMENT OF DIVERSITY AT THE UNIVERSITY; IS THAT RIGHT?
A. THAT'S CORRECT.
Q. ARE YOU AFFILIATED WITH THAT DEPARTMENT, DOCTOR? IS THAT

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF JOHN SANDERS

[SANDERS 84]

'84?
A. YES, SIR.
Q. AND THEN WHERE DID YOU GO?
A. I OBTAINED A POSITION AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA AS A MEDICAL PHOTOGRAPHER AND THEN I WORKED IN PATHOLOGY. AND DURING THAT TIME I ATTENDED THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN OBTAINING MY MASTER'S DEGREE AND MASTER'S OF HEALTH SERVICES ADMINISTRATION.
Q. AND DID YOU OBTAIN THOSE DEGREES, YOUR MASTERS' DEGREE?
A. YES, I DID.
Q. AND THAT WAS IN WHAT YEAR?
A. 1989.
Q. AND DID YOU BECOME EMPLOYED THEREAFTER AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. YES, SIR. I TOOK A POSITION AS ADMINISTRATIVE RESIDENT FOR CHARLENE MCCANTS OR CHARLENE STEWART AT THAT TIME.
Q. AND HOW LONG DID YOU SERVE OR WORK AT THE MEDICAL UNIVERSITY?
A. TOTAL TIME AT THE MEDICAL UNIVERSITY WAS JUST UNDER TEN

YEARS. AND MY ADMINISTRATIVE CAPACITY IT WAS JUST ABOUT FIVE YEARS.

Q. AND YOU LEFT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WHEN, MR. SANDERS?

A. AUGUST OF 1994.

Q. AND HAVE YOU BEEN IN YOUR CURRENT POSITION IN CINCINNATI

[SANDERS 85]

SINCE THAT TIME?

A. SINCE SEPTEMBER OF '94, YES, SIR.

Q. AND YOUR ROLE AT THAT FACILITY IS AS A HOSPITAL ADMINISTRATOR?

A. YES, SIR, IT IS.

Q. NOW, AS TO THIS POLICY THAT THIS LAWSUIT IS ABOUT, WERE YOU INVOLVED IN THE FORMATION OF THE POLICY?

A. I CAME INTO THE ADMINISTRATIVE RESIDENCY PROGRAM AND STARTED ATTENDING SOME OF THE MEETINGS AND THE FORMALIZATION OF THOSE POLICIES.

Q. AND WERE YOU THERE IN THE DECISION MAKING CAPACITY?

A. NOT AT FIRST. AS THE POLICY WAS IMPLEMENTED AND WE HAD FURTHER REFINEMENTS OF IT, I WAS IN A POSITION TO HAVE SOME INPUT.

Q. WAS - WAS THIS POLICY SHIRLEY BROWN'S?

A. NO.

Q. WERE THE NORMS AND STANDARDS OF THE MEDICAL UNIVERSITY IN

FORMULATING AND ADOPTING THE POLICY DEVIATED FROM IN ANY WAY I IN THE APPROVAL OF THIS POLICY?
A. NO, SIR, THEY WEREN'T.
Q. IS IT COMMON TO INVOLVE OUTSIDE AGENCIES IN FORMING POLICIES THAT MIGHT IN SOME WAY INCLUDE THAT?
A. YES, SIR. IT WOULD DEPEND UPON THE POLICY BECAUSE WITHIN THE HOSPITAL THERE ARE MANY POLICIES THAT DO PERTAIN TO OUTSIDE AGENCIES. FOR INSTANCE, SAFETY POLICIES THAT WOULD

[SANDERS 84]

'84?
A. YES, SIR.
Q. AND THEN WHERE DID YOU GO?
A. I OBTAINED A POSITION AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA AS A MEDICAL PHOTOGRAPHER AND THEN I WORKED IN PATHOLOGY. AND DURING THAT TIME I ATTENDED THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN OBTAINING MY MASTER'S DEGREE AND MASTER'S OF HEALTH SERVICES ADMINISTRATION.
Q. AND DID YOU OBTAIN THOSE DEGREES, YOUR MASTERS' DEGREE?
A. YES, I DID.
Q. AND THAT WAS IN WHAT YEAR?
A. 1989.
Q. AND DID YOU BECOME EMPLOYED THEREAFTER AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

A. YES, SIR. I TOOK A POSITION AS ADMINISTRATIVE RESIDENT FOR CHARLENE MCCANTS OR CHARLENE STEWART AT THAT TIME.
Q. AND HOW LONG DID YOU SERVE OR WORK AT THE MEDICAL UNIVERSITY?
A. TOTAL TIME AT THE MEDICAL UNIVERSITY WAS JUST UNDER TEN YEARS. AND MY ADMINISTRATIVE CAPACITY IT WAS JUST ABOUT FIVE YEARS.
Q. AND YOU LEFT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WHEN, MR. SANDERS?
A. AUGUST OF 1994.
Q. AND HAVE YOU BEEN IN YOUR CURRENT POSITION IN CINCINNATI

[SANDERS 85]

SINCE THAT TIME?
A. SINCE SEPTEMBER OF '94, YES, SIR.
Q. AND YOUR ROLE AT THAT FACILITY IS AS A HOSPITAL ADMINISTRATOR?
A. YES, SIR, IT IS.
Q. NOW, AS TO THIS POLICY THAT THIS LAWSUIT IS ABOUT, WERE YOU INVOLVED IN THE FORMATION OF THE POLICY?
A. I CAME INTO THE ADMINISTRATIVE RESIDENCY PROGRAM AND STARTED ATTENDING SOME OF THE MEETINGS AND THE FORMALIZATION OF THOSE POLICIES.
Q. AND WERE YOU THERE IN THE DECISION MAKING CAPACITY?

A. NOT AT FIRST. AS THE POLICY WAS IMPLEMENTED AND WE HAD FURTHER REFINEMENTS OF IT, I WAS IN A POSITION TO HAVE SOME INPUT.
Q. WAS - WAS THIS POLICY SHIRLEY BROWN'S?
A. NO.
Q. WERE THE NORMS AND STANDARDS OF THE MEDICAL UNIVERSITY IN FORMULATING AND ADOPTING THE POLICY DEVIATED FROM IN ANY WAY IN THE APPROVAL OF THIS POLICY?
A. NO, SIR, THEY WEREN'T.
Q. IS IT COMMON TO INVOLVE OUTSIDE AGENCIES IN FORMING POLICIES THAT MIGHT IN SOME WAY INCLUDE THAT?
A. YES, SIR. IT WOULD DEPEND UPON THE POLICY BECAUSE WITHIN THE HOSPITAL THERE ARE MANY POLICIES THAT DO PERTAIN TO OUTSIDE AGENCIES. FOR INSTANCE, SAFETY POLICIES THAT WOULD

[SANDERS 86]

INCLUDE EITHER POLICE DEPARTMENT, FIRE DEPARTMENT, SOCIAL SERVICES DEPARTMENTS, WHATEVER, SO THAT WE CAN COMMUNICATE PROPERLY BETWEEN THE INTERNAL PARTS OF THE HOSPITAL AND THOSE OUTSIDE AGENCIES. SO, YES, SIR.
Q. ANY REVISIONS THAT WERE MADE TO THE POLICY, WERE THEY DONE IN A NORMAL FASHION AND REVIEWED ON AN ANNUAL BASIS BY THE JOINT COMMISSION?

A. YES, SIR. WE UNDER THE - OUR REGULATIONS BY THE JOINT COMMISSION, WE ARE REQUIRED, ALL HOSPITALS, TO REVIEW POLICIES ON AN ANNUAL, BIANNUAL OR EVERY THREE YEARS BY THE MEDICAL DEPARTMENTS OR BY THE HOSPITAL. AND THOSE POLICIES ARE REVIEWED ON A TIMELY BASIS.

Q. AND THE CONTENTS OF THIS POLICY, WAS IT CONSISTENT WITH THE MEDICAL UNIVERSITY NORMS AND STANDARDS CONCERNING PATIENTS RIGHTS AND PRIVILEGES?

MS. PALTROW: OBJECTION LEADING.

THE COURT: I THINK THE QUESTION IS LEADING, AND I SUSTAIN THE OBJECTION.

Q. (BY MR. HOOD, CONTINUING) IN THE CONTEXT OF THE POLICY, WAS IT CONSISTENT WITH THE MEDICAL UNIVERSITY'S NORMS AND STANDARDS?

A. YES, SIR, IT WAS.

Q. AND WITH REGARD TO PATIENT RIGHTS, DID THIS POLICY CHANGE OR DEVIATE FROM ANY FORMAL STANDARD CONCERNING PATIENT PRACTICE?

[SANDERS 87]

A. NO, SIR, IT DIDN'T.

Q. NOW, WHEN DID YOU TAKE ON A ROLE TO AS AN ADMINISTRATOR AT THE MEDICAL UNIVERSITY TO MAKE SURE HOSPITAL POLICIES WERE FOLLOWED?

A. I WAS IN AN OFFICIAL ROLE AS AN ADMINISTRATOR AT THE MEDICAL UNIVERSITY MARCH OF '90, I BELIEVE.

Q. AND WITH REGARD TO THE TREATMENT OF PREGNANT WOMEN AND THE DELIVERY OF WOMEN AT THE MEDICAL UNIVERSITY, WHAT ROLE DID YOU TAKE ON?

A. I TOOK ON THE RESPONSIBILITY OF WORKING WITH THE DEPARTMENT OF OBSTETRICS AND GYNECOLOGY AND ALSO THE NURSING DEPARTMENT IN THAT AREA. AND WAS THEIR REPRESENTATIVE, IN A WAY, TO HOSPITAL ADMINISTRATION.

Q. AND WAS THIS POLICY APPLIED TO PRIVATE AS WELL AS PUBLIC CLINIC PATIENTS?

A. YES, SIR, IT WAS.

Q. WAS THIS POLICY DESIGNED, DEVELOPED OR IMPLEMENTED IN A DISCRIMINATORY FASHION?

A. ABSOLUTELY NOT.

Q. WOULD YOU CHARACTERIZE THE CRITERIA UNDER THE POLICY?

A. WE UTILIZED THE CRITERIA THAT WAS PUT TOGETHER IN THE POLICY SO THAT IT WOULD NOT BE SUBJECTIVE AND WE WOULD HAVE OBJECTIVE TESTING OR ISSUES THAT WE WOULD FOLLOW TO MAKE SURE THAT WOMEN WERE TESTED OR GIVEN URINE DRUG SCREENS PROPERLY.

Q. MR. SANDERS, WERE YOU PRESENT AS A HOSPITAL EMPLOYEE AND

AS ONE OF THE ADMINISTRATORS THERE WHEN WOMEN WERE ARRESTED UNDER THIS POLICY?
A. YES, SIR, I WAS.
Q. WHAT WAS YOUR ROLE AT THAT TIME?
A. AT THAT TIME I WAS THE ADMINISTRATOR IDENTIFIED WITH THE PERINATAL AREAS. AND MY ROLE WAS TO BE PRESENT AT ANYTIME WHEN A WARRANT WAS SERVED TO A PATIENT TO MAKE SURE THAT THE PROCEDURE WAS DONE IN A CORRECT MANNER, THAT THE DIGNITY OF THE PATIENT WAS PRESERVED AS MUCH AS POSSIBLE, AND ALSO TO MAKE SURE THAT THERE WAS NO DISRUPTION ON THE FLOOR.
Q. AND AT ANYTIME WHEN A WOMEN WAS ARRESTED UNDER THIS POLICY, WAS THERE ANY DEVIATION FROM THE METHOD AND MODE BY WHICH THE POLICY WAS TO OPERATE?
A. NO, SIR, THERE WASN'T.
Q. WERE ALL OF THE PATIENTS THAT WERE ARRESTED BLACK?
A. NO, SIR.
Q. WERE YOU PRESENT WHEN A WHITE PATIENT WAS ARRESTED?
A. YES, SIR, I WAS.
Q. WAS SHE TREATED ANY DIFFERENTLY THAN A BLACK PATIENT?
A. NO, SIR.
Q. NOW THE ACTUAL ARRESTING, WAS THAT DONE BY ANY EMPLOYEE OF THE MEDICAL UNIVERSITY?
A. NO, THIS - IT WAS DONE BY THE DEPARTMENT OF POLICE.

Q. AND WERE THE PATIENT'S RIGHTS ENFORCED?
A. YES, SIR, THEY WERE.

[SANDERS 89]

MS. PALTROW: OBJECTION, LEADING.
Q. (BY MR. HOOD, CONTINUING) DID YOU GET INVOLVED IN THE PATIENTS' RIGHTS WITH REGARD TO THEIR ARRESTS?
A. I MADE SURE THAT THEIR RIGHTS WERE PRESERVED.
Q. AND WHAT WAS REQUIRED BEFORE A PATIENT WAS ARRESTED?
A. COULD YOU EXPLAIN YOUR QUESTION?
Q. DID YOU HAVE TO HAVE A MEDICAL ORDER, DISCHARGE ORDER?
A. CERTAINLY. THE PHYSICIAN WOULD WRITE THE DISCHARGE ORDER.
Q. WERE THESE ARRESTS DONE IN A - DESCRIBE HOW THEY WERE DONE.
A. IF THE POLICE DEPARTMENT, USUALLY DETECTIVE WARING, THAT I WAS AWARE OF, WOULD COME TO THE HOSPITAL AND WOULD COME TO EITHER MY OFFICE. OR I WOULD KNOW WHERE DETECTIVE WARING WAS AND WOULD MEET WITH HER AND WITH ONE OF THE CASE MANAGERS. WE WOULD PROCEED TO THE PATIENT'S ROOM. IN SOME CASES DETECTIVE WARING WOULD SERVE THE WARRANT AND IN OTHER CASES OUR SECURITY

OFFICERS WOULD DO THAT, BECAUSE THEY WERE EMPLOYED BY THE STATE AND HAD THAT CAPACITY.

AND THEN THE - AFTER THE WARRANT WAS READ, THE PATIENT WAS - GATHERED HER BELONGINGS, WAS PLACED IN A WHEELCHAIR. SHE DID HAVE - IN MOST CASES WAS HANDCUFFED. WE PUT A SHEET OR A BLANKET OVER HER SO THAT PEOPLE COULD NOT SEE THAT. SHE WAS TAKEN OUT OF THE HOSPITAL THROUGH BACK CORRIDORS OR IN WAYS THAT WE WOULD NOT MAKE A PUBLIC DISPLAY.

[SANDERS 90]

SHE WAS TAKEN OUT ON SABIN STREET TO DETECTIVE WARING'S CAR.

Q. WHAT STREET IS THAT?

A. SABIN STREET.

Q. IS THAT THE MAIN ENTRANCE TO THE HOSPITAL?

A. NO, IT'S NOT. A BACK STREET. YOU CAN ALMOST CALL IT AN ALLEYWAY BETWEEN THE RESEARCH BUILDING AND THE HOSPITAL.

Q. DO PATIENTS NORMALLY GO IN AND OUT OF THAT DOOR?

A. PATIENTS DON'T NORMALLY DO THAT. THE ONLY PATIENTS AT - DURING PART OF THAT TIME THE ENTRANCE TO THE OB/GYN CLINIC WAS LOCATED DOWN THE STREET.

Q. NOW, AT ANYTIME WHILE YOU WERE AT THE MEDICAL UNIVERSITY WAS ANY WOMAN ARRESTED AND NOT ALLOWED TO SEE A RELATIVE?

A. NOT THAT I'M AWARE OF.
Q. NOT ALLOWED TO PUT ON CLOTHING?
A. NOT THAT I'M AWARE OF.
Q. NOT GIVEN A DISCHARGE KIT OR MEDICAL SUPPLIES THAT WOMEN WHO HAVE HAD A BABY WOULD BE GIVEN?
A. NO, THOSE PATIENTS WERE ALWAYS GIVEN THE SAME MATERIALS THAT THE PATIENT WOULD GET WHEN THEY WERE DISCHARGED FROM THE HOSPITAL.
Q. WERE ANY WOMEN HELD, PHYSICALLY CONTAINED UNTIL THE POLICE ARRIVED?
A. ABSOLUTELY NOT.
Q. DID SHIRLEY BROWN PROHIBIT ANY PATIENT FROM SEEING ANY FAMILY MEMBERS, TO YOUR KNOWLEDGE?

[SANDERS 91]

A. NOT THAT I'M AWARE OF.
Q. AND DID YOU ACCOMPANY THE PATIENT AS THE PATIENT LEFT THE HOSPITAL?
A. I STAYED WITH THE PATIENT FROM THE TIME THAT THE WARRANT WAS SERVED UNTIL THE TIME SHE WAS IN THE CAR.
Q. AND WOULD YOU DESCRIBE THE DEMEANOR AND PERFORMANCE OF THE JOB OF ARRESTING BY DETECTIVE WARING?
A. DETECTIVE WARING WAS VERY PROFESSIONAL, VERY CARING TOWARDS THE PATIENTS.
Q. DID SHE GIVE ANY INDICATION OF DISCRIMINATING AGAINST ANY PATIENTS?

A. ABSOLUTELY NOT.
Q. HAVE YOU - DURING THE TIME YOU WERE AT THE MEDICAL UNIVERSITY AND WORKING AND HELPING, AMONG OTHER THINGS WITH THIS POLICY, DID YOU EVER HEAR ANYONE EXPRESS ANY RACIALLY DEROGATORY COMMENTS IN CONNECTION WITH THE POLICY?
A. NO, SIR, I HAVE NOT.
Q. SPECIFICALLY AS TO SHIRLEY BROWN, DID YOU EVER HEAR HER EXPRESS ANY RACIALLY DEROGATORY COMMENTS?
A. NO, SIR, I DID NOT.
Q. WAS THERE EVER ANY INTENTION, AS YOU OBSERVED IT, THROUGH THE IMPLEMENTATION AND DEVELOPMENT AND FOLLOWING OF THIS POLICY, TO DISCRIMINATE AGAINST BLACK WOMEN?
A. ABSOLUTELY NOT. OUR FOCUS WAS ON THE DISPOSITION OF THE BABY WHEN IT WAS BORN.

* * *

[SANDERS 97]

MS. PALTROW: IT'S A STATEMENT THIS WAS ENFORCED TO EVERYBODY EQUALLY. THIS IS AN OPPORTUNITY TO ASK HIM ABOUT THAT.
THE COURT: GO AHEAD.
MS. SHOWERS: YOUR HONOR, IT'S IN RESPONSE TO THE HEALTH AND HUMAN SERVICES INVESTIGATION, THAT'S - IT'S

DIRECTLY RELATED. AND THEY'RE JUST TRYING TO GET IN THE BACK DOOR.

THE COURT: I JUST DON'T UNDERSTAND THE IMPORTANCE OF IT. I HAVE BEEN -

I HAVE BEEN - TELL ME ABOUT IT AGAIN.

MS. SHOWERS: IT'S IN RESPONSE TO THE HEALTH AND HUMAN SERVICES INVESTIGATION. AND THEY'RE TRYING TO GET IN THROUGH THE BACK DOOR SOMETHING THEY CAN'T GET IN THROUGH THE FRONT DOOR.

MS. PALTROW: NO, SIR.

THE COURT: WHAT DOES IT HAVE TO DO WITH THE CASE?

MR. HOOD: NOTHING. THE CASE IS ALREADY BROUGHT.

MS. PALTROW: AS WE ASKED HIM IN HIS DEPOSITION -

THE COURT: LET'S REFER TO WHAT WE ASK HIM HERE IN COURT.

MS. PALTROW: SAYS, PLEASE INCORPORATE AN OPPORTUNITY FOR EACH PRENATAL PATIENT TO VIEW THE VIDEOTAPE. THIS IS THE VIDEOTAPE UNDER THE POLICY. THEY WERE NOT

[SANDERS 98]

ENFORCING THE POLICY AT THESE OTHER CLINICS.

THE COURT: HASN'T SOMEBODY ALREADY TESTIFIED TO

THAT? DIDN'T THE LADY COME IN AND SAY THEY WERE NOT?

MS. PALTROW: NO. DENA CLAIR SAID THEY WERE. THERE HAS BEEN CONFLICTING TESTIMONY, AND HE JUST TESTIFIED THAT IT WAS APPLIED FAIRLY.

THE COURT: GO AHEAD. I'LL PERMIT IT.

MS. PALTROW: YOUR HONOR, I TAKE IT IT'S IN EVIDENCE?

THE COURT: YES, IT'S IN EVIDENCE.

Q. (BY MS. PALTROW, CONTINUING) CAN YOU TELL ME WHAT IT SAYS AT THE TOP.

THE COURT: JUST READ IT. READ IT TO THE JURY. YOU PUT IT IN EVIDENCE, NOW PUBLISH IT. GO AHEAD.

Q. (BY MS. PALTROW, CONTINUING) AT THE TOP THERE IS HANDWRITTEN WORD THAT SAYS, I BELIEVE, LAWSUIT. AND IT'S A MEMORANDUM TO NURSE MIDWIVES AND STAFF AT THE RUTLEDGE AVENUE CLINIC, FROM KATHLEEN M. HIGGENS, DIRECTOR OF NURSING SERVICES, DATED MARCH 23, 1994, REGARDING ABUSE FILM. I HAVE BEEN ASKED TO ASSURE OUR COMPLIANCE WITH THE DIRECTIVES OF MEDICAL UNIVERSITY HOSPITAL IN REGARD TO ORIENTATION OF MATERNAL CLIENTS TO RISK OF DRUG USE DURING PREGNANCY. PLEASE INCORPORATE AN OPPORTUNITY FOR EACH PRENATAL PATIENT TO VIEW

THE VIDEOTAPE SUPPLIED BY JOHN SANDERS AND REQUEST THAT EACH CLIENT READ AND SIGN THE ATTACHED FORM. IF THERE IS ANY

[SANDERS 99]

ANTICIPATED DIFFICULTY COMPLYING WITH THIS DIRECTIVE, PLEASE RESPOND AS SOON AS POSSIBLE.

MR. SANDERS, ISN'T IT CORRECT THAT THIS WAS WRITTEN IN RESPONSE TO SOME REQUEST - SOME INFORMATION THAT YOU SOUGHT; ISN'T THAT TRUE?

A. I FREQUENTLY OR ON A REGULAR BASIS TOUCHED BASE WITH DIFFERENT AREAS WHERE PREGNANT WOMEN WERE SEEN TO MAKE SURE THAT THE POLICY WAS BEING ENFORCED.

Q. DID YOU FINISH YOUR SENTENCE?

A. YES.

Q. I'M SORRY, I COULDN'T HEAR IT.

A. WAS BEING ENFORCED.

Q. AND CAN YOU TELL ME WHAT THE NURSE MIDWIVES AND STAFF AT RUTLEDGE AVENUE CLINIC WHO THEY ARE OR WHAT THAT IS?

A. THE NURSE MIDWIFERY PROGRAM IS DIRECTED BY THE COLLEGE OF NURSING AT THE MEDICAL UNIVERSITY. AND THEY - THEY AT THAT TIME HAD A PRACTICE ON RUTLEDGE AVENUE.

Q. AND THAT'S PART OF THE MEDICAL UNIVERSITY, ISN'T IT?

A. YES, IT IS.

Q. AND WOULDN'T IT BE FAIR TO SAY WHAT THIS LETTER INDICATES

THAT NOT UNTIL 1994 WERE THEY SHOWING THE VIDEOTAPE ASSOCIATED WITH THE INTERAGENCY POLICY?

A. NO, MS. PALTROW, THAT DOESN'T INDICATE THAT AT ALL. JUST ASSURES COMPLIANCE WITH THE POLICY.

Q. MR. SANDERS, DO YOU HAVE ANY OTHER DOCUMENTATION OF

[SANDERS 100]

COMPLIANCE WITH THE POLICY FROM THAT CLINIC PRIOR TO MARCH OF 1994?

A. I DO NOT HAVE IN MY POSSESSION ANY NOTIFICATION OF COMPLIANCE.

Q. MR. SANDERS, YOU WERE ASKED BEFORE ABOUT THE JOINT COMMISSION. CAN YOU TELL ME A LITTLE BIT ABOUT WHAT THEY'RE PROVIDED WITH?

A. WHAT THEY'RE PROVIDED WITH?

Q. YES, WHEN THEY COME TO EVALUATE THE HOSPITAL?

A. IT'S AN ENORMOUS AMOUNT OF INFORMATION. THE JOINT COMMISSION SURVEYS THE HOSPITAL ON A VARIETY OF DIFFERENT ISSUES. WE PROVIDE THEM WITH THE POLICIES AND STANDARDS OF OUR ORGANIZATION, LIKE SAFETY ISSUES, POLICIES AND PROCEDURES FROM DIFFERENT UNITS, NURSING PROTOCOLS, PHYSICIAN DOCUMENTATION, MEDICAL RECORDS, CAN - EVERYTHING THAT IS INVOLVED IN RUNNING A HOSPITAL.

Q. YOU DIDN'T PARTICULARLY SHOW THEM THE MEDICAL RECORDS OF WOMEN WHO WERE IDENTIFIED UNDER THE POLICY AND TURNED OVER TO THE POLICE, DID YOU?
A. I DON'T KNOW WHAT RECORDS WERE PROVIDED TO THE JOINT COMMISSION. THAT'S A RANDOM PULL OF RECORDS THAT IS GIVEN TO THEM.
Q. SO IT'S POSSIBLE, ISN'T IT, THAT THE JOINT COMMISSION WOULD NOT KNOW ABOUT HOW WOMEN WERE TAKEN OUT OF THE HOSPITAL IN HANDCUFFS AND SHACKLES; ISN'T THAT CORRECT?

[SANDERS 101]

A. THE JOINT COMMISSION WOULD HAVE BEEN ABLE TO SEE THE POLICY IN THE ADMINISTRATIVE POLICY BOOK.
Q. THEY WOULD HAVE JUST SEEN THE WRITTEN POLICY BUT THEY WOULDN'T HAVE HAD ANY FURTHER INFORMATION ABOUT HOW IT WAS ACTUALLY IMPLEMENTED, WOULD THEY?
A. NO.
Q. MR. SANDERS, YOU SAID THAT YOU ATTENDED MANY OF THESE ARRESTS TO MAKE SURE THEIR RIGHTS WERE PRESERVED; ISN'T THAT CORRECT?
A. YES, MA'AM, I DID.
Q. IN THAT CAPACITY WERE YOU WORKING AS A HOSPITAL EMPLOYEE, FOR THE SOLICITOR'S OFFICE, OR FOR THE POLICE IN TERMS OF

INSURING RIGHTS?
A. AS A HOSPITAL EMPLOYEE.
Q. AND WHAT RIGHTS DID YOU THINK THEY HAD AT THAT POINT, MR. SANDERS?
A. THE RIGHTS TO BE TREATED FAIRLY AND WITHIN OUR INSTITUTION AND TO MAKE SURE THAT THAT POLICY WAS ENACTED IN THE WAY THAT IT WAS DESIGNED.
Q. AND IN YOUR ESTIMATION, TAKING WOMEN OUT IN HANDCUFFS AND ALSO FEET SHACKLES WAS IN FACT HOW THE POLICY WAS DESIGNED TO TAKE PLACE; ISN'T THAT CORRECT?
A. THE POLICY WAS TO TURN THE INFORMATION OVER WHEN WE SUSPECTED OR HAD EVIDENCE OF COCAINE ABUSE. THE POLICY OF THE POLICE DEPARTMENT, THAT WAS THEIR POLICY TO TAKE CARE OF THE

[SANDERS 102]

PATIENTS TAKING THEM OUT AND HOW THEY WERE HANDCUFFED. THAT WAS NOT UNDER OUR CONTROL.
Q. MR. SANDERS, I'M GOING TO SHOW YOU WHAT IS PLAINTIFFS' EXHIBIT 224, A COPY OF A - A VERSION OF THE HOSPITAL POLICY THAT YOU IDENTIFIED AND AUTHENTICATED IN A DEPOSITION THAT IS NOW IN EVIDENCE. I WOULD LIKE TO ASK YOU TO PUBLISH A PORTION OF THAT, AND THAT WOULD BE THE PARAGRAPH UNDER THE WORDS POLICY?
A. PUBLISH MEAN READ IT?

Q. YES.
A. I'M SORRY.
MR. HOOD: CAN I SEE WHAT HE HAS GOT?
MS. PALTROW: YES, OF COURSE.
MR. HOOD: IS IT IN EVIDENCE?
MS. PALTROW: YES, IT IS.
Q. (BY MS. PALTROW, CONTINUING) IF YOU WOULD READ THAT PARAGRAPH, PLEASE.
A. "THE MUSC MEDICAL CENTER WILL COOPERATE WITH THE CITY OF CHARLESTON POLICE DEPARTMENT AND COURT OF LAW IN REPORTING PREGNANT WOMEN WHO HAVE TESTED POSITIVE FOR ILLEGAL DRUGS. THE FOLLOWING CRITERIA WILL BE USED TO DETERMINE WHO WILL BE SCREENED FOR URINE DRUG TESTING."
Q. SO IN FACT THE CITY OF CHARLESTON POLICE DEPARTMENT COULD MAKE ARRESTS BECAUSE THE MEDICAL UNIVERSITY DECIDED TO COOPERATE WITH THEM IN TERMS OF REPORTING COCAINE POSITIVE

[SANDERS 103]

WOMEN, ISN'T THAT CORRECT?
A. WE REPORTED POSITIVE DRUG TESTS IN REGARD TO THE DISPOSITION OF THE BABY BECAUSE ALL HEALTH CARE PROVIDERS ARE REQUIRED TO PROVIDE INFORMATION TO OUTSIDE AGENCIES IF THEY'RE SUSPICIOUS OF CHILD ABUSE.
Q. YOU DIDN'T ANSWER MY QUESTION. ISN'T IT CORRECT THAT

THEY WERE ABLE TO MAKE THE ARRESTS BECAUSE YOU DECIDED TO COOPERATE FOR WHATEVER REASON?

A. SURE WE COOPERATED, YES, MA'AM.

Q. AND ISN'T IT CORRECT, MR. SANDERS, THAT BEFORE THIS POLICY WAS PUT INTO PLACE, THAT IF THERE WAS A POSITIVE DRUG TEST ON A WOMAN ON A NEWBORN OR ALCOHOL TEST, THE HOSPITAL POLICY WAS ONLY TO REPORT IT TO DSS?

A. THAT'S CORRECT.

Q. SO THIS WAS A CHANGE FROM THAT POLICY THAT EXISTED ALL OF THE WAY UP UNTIL OCTOBER OF 1989; ISN'T THAT CORRECT?

A. YES, IT WAS.

Q. AND THERE WAS NO CHANGE IN THE STATE LAW AS OF OCTOBER 1989 THAT ANYBODY TOLD YOU ABOUT; ISN'T THAT CORRECT?

A. NOT THAT I'M AWARE OF.

Q. SO THIS POLICY CHANGED - THIS POLICY THAT MUSC ADOPTED WITH THE POLICE AND THE SOLICITOR'S OFFICE, CHANGED WHAT HAD BEEN HAPPENING FROM THE NORM BEFORE THE POLICY; ISN'T THAT CORRECT?

A. IT WAS A NEW POLICY, YES, MA'AM.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF SARAH SCHUH

[SCHUH 274]

(TESTIMONY EXCERPT OF SARAH SCHUH, 12-6-96.)
MS. DUNN: CALL SARAH SCHUH.

- - -

SARAH SCHUH, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. DUNN:
WOULD YOU STATE YOUR FULL NAME FOR THE COURT, PLEASE.
A. SARAH ELIZABETH SCHUH.
Q. WHAT DO YOU DO?
A. I'M ON THE PEDIATRIC FACULTY OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN CHARLESTON.
Q. HOW LONG HAVE YOU HELD THAT POSITION?
A. I HAVE BEEN ON THE FACULTY SINCE 1969.
Q. IN THE COURSE OF YOUR WORK AT THE MEDICAL UNIVERSITY DID YOU HAVE OCCASION TO PUT TOGETHER AN APPLICATION TO - FOR A GRANT PROPOSAL TO THE MARCH OF DIMES?
A. YES, I DID.
MS. SHOWERS: WE WOULD OBJECT AS TO RELEVANCE. I

THINK THE COURT HAS RULED ON IT.
THE COURT: I DON'T KNOW THAT I CAN RULE ON IT RIGHT NOW. LET ME SEE WHAT HAPPENS.
Q. (BY MS. DUNN, CONTINUING) DID YOU HAVE AN OCCASION TO PUT TOGETHER A GRANT PROPOSAL AS PART OF YOUR WORK AT THE MEDICAL UNIVERSITY?

[SCHUH 275]

A. YES, I DID.
Q. AND WHEN DID YOU PUT THAT PROPOSAL TOGETHER?
A. I BELIEVE IN 1990. '89 AND '90.
Q. AND I HAVE HANDED YOU A DOCUMENT THAT HAS PREVIOUSLY BEEN MARKED FOR IDENTIFICATION, PLAINTIFF'S EXHIBIT NUMBER 5; IS THAT CORRECT?
A. YES.
Q. WITH WHOM DID YOU WORK ON THIS GRANT PROPOSAL?
A. A VARIETY OF PEOPLE WITHIN THE UNIVERSITY. I'M NOT SURE THAT I COULD NAME THEM ALL.
Q. DID YOU WORK WITH SHIRLEY BROWN IN THE PROCESS OF PUTTING TOGETHER THIS PROPOSAL?
A. YES, I DID.
Q. DID YOU WORK WITH DR. WILLIAM PITTARD IN THE PROCESS OF PUTTING TOGETHER THIS PROPOSAL?
A. YES, SIR.
Q. DID YOU WORK WITH DR. EDGAR HORGER IN PUTTING TOGETHER THE PROPOSAL?

A. YES, BUT NOT EXTENSIVELY. HE DID REVIEW ALL OF THE INFORMATION I BELIEVE.
Q. WERE YOU THE PERSON WHO ACTUALLY PUT PEN TO PAPER AND DID MOST OF ACTUAL WRITING?
A. A GOOD BIT, YES.
Q. DID OTHER PEOPLE WHO WORKED WITH YOU IN PUTTING TOGETHER THE GRANT PROPOSAL REVIEW THE INFORMATION BEFORE IT WAS

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[SCHUH 277]

REFLECT THE INFORMATION THAT WAS GATHERED BY YOU AND THE OTHER INDIVIDUALS IN PUTTING TOGETHER THIS GRANT APPLICATION?
A. IT DOES REFLECT SOME OF IT. OBVIOUSLY THERE WAS A GREAT DEAL OF INFORMATION THAT WAS NOT INCLUDED IN THE GRANT APPLICATION.
Q. WHAT SORT OF INFORMATION DID YOU GATHER TO PUT INTO THIS GRANT APPLICATION?
A. WE REVIEWED ARTICLES FROM THE LITERATURE. WE REVIEWED CASE INFORMATION THAT WE HAD FROM THE MEDICAL UNIVERSITY IN TERMS OF WHAT OUR CONCERNS WERE. WE DISCUSSED WITH OTHER MEMBERS OF THE UNIVERSITY WHAT THEIR CONCERNS MIGHT HAVE BEEN. WE TALKED TO PEOPLE WHO MIGHT BE NEEDED IN ORDER TO TRY TO PROVIDE SERVICES UNDER THE POLICY, SUCH AS SUBSTANCE ABUSE

COUNSELORS, THAT TO - TO SEE WHETHER WHAT WAS AVAILABLE LOCALLY OR WITHIN - WITHIN THE UNIVERSITY, CHARLESTON AREA. THE AREA OF PATIENTS THAT WE DREW FROM. PROBABLY SOME OTHER THINGS THAT I DON'T REALLY RECALL. I'M SURE THAT I COULDN'T NAME THEM ALL.

Q. AND THIS GRANT PROPOSAL WAS PUT TOGETHER IN THE SPRING OF 1989?

A. I BELIEVE IT WAS PUT TOGETHER IN THE SPRING GOING ON INTO THE SUMMER OF 1989.

Q. AND WHAT WAS - WHAT WAS - WHAT QUESTION WAS THE GRANT PROPOSAL TRYING TO ADDRESS?

A. WELL, THAT THE CONCERN WAS THAT - WAS THAT WE HAD SEEN

[SCHUH 278]

OR BELIEVED WE HAD SEEN AN INCREASE IN THE PROBLEMS ASSOCIATED WITH THE USE OF COCAINE BY PREGNANT WOMEN AND PROBLEMS THAT RELATED TO DAMAGED PREGNANCIES AND HIGH-RISK NEWBORNS THAT WERE PLACED AT RISK DUE TO EXPOSURE TO SUBSTANCE ABUSE. AND OUR CONCERN WAS TRYING TO DEVELOP A PROGRAM WHICH WOULD ALLOW US TO LIMIT - LIMIT AS MUCH AS POSSIBLE THE RISK BY REDUCING THE USE OF COCAINE BY PREGNANT WOMEN AND PROVIDING SERVICES AND COUNSELING, WHICH WOULD GIVE A BETTER OUTCOME FOR NEWBORNS

AND FOR THE BABIES AFTER THEY WERE BORN.
Q. WAS THIS PRO - WAS THE GRANT PROPOSAL FOR A RESEARCH GRANT?
A. NO, IT WAS NOT. IT WAS FOR A SERVICE GRANT.
Q. WHAT WAS THE SERVICE THAT YOU WERE HOPING TO PROVIDE SPECIFICALLY WITHIN THIS GRANT?
A. WE WERE HOPING TO GET THE PATIENTS, THAT IS THE MOTHERS, INTO - OFF OF COCAINE, INTO COUNSELING TO IMPROVE THEIR PREGNANCY OUTCOME WITH BETTER NUTRITION INFORMATION, BETTER PARENTING INFORMATION, AND JUST BETTER OVERALL CARE AND A BETTER CAPACITY TO COMPLY WITH THE NEED OF A PREGNANT WOMEN BY REDUCING EXPOSURE TO TOXIC SUBSTANCES AND SUBSTANCES THAT CHANGED MOOD AND CAPACITY TO EVALUATE THEIR OWN RISKS.
Q. ONE OF THE THINGS THAT WAS INCLUDED IN THE BUDGET PROPOSAL WERE FUNDS TO PROVIDE FOR TRANSPORTATION FOR WOMEN WHO MIGHT NEED IT FOR
A. THAT'S CORRECT.

[SCHUH 279]

Q. WHY WAS THAT INCLUDED IN THE BUDGET?
A. IN WORKING WITH ANY HIGH-RISK POPULATION, WHETHER IT'S A HIGH-RISK POPULATION OF CHILDREN FOR ANY KIND OF HANDICAP OR

WITH ANY DIFFICULTY IN TERMS OF SOMETIMES FINANCES AND SOMETIMES OTHER ASSOCIATED PROBLEMS, PATIENTS WHO DON'T HAVE CARS, PATIENTS WHO DON'T HAVE MONEY FOR TAXIES, PATIENTS WHO DON'T HAVE SUPPORTIVE FAMILY MEMBERS, ONE OF THE REASONS OFTEN GIVEN FOR MISSING APPOINTMENTS IS THAT THEY DON'T HAVE ADEQUATE TRANSPORTATION. AND WE FELT THAT WE COULD IMPROVE THEIR - THE CHANCES THAT WE WOULD GET PATIENTS INTO THE PROGRAM BY PROVIDING TRANSPORTATION.

Q. BUT ONE OF THE UNDERLYING CONCEPTS BEHIND THE GRANT PROPOSAL WAS THAT YOU ACTUALLY HAD SOME QUESTIONS THAT WERE NOT YET ANSWERED THAT YOU WERE GOING TO TRY TO ANSWER WITH THIS PROGRAM; IS THAT FAIR?

A. I THINK ANYTIME THAT YOU PROVIDE SERVICE TO A POPULATION YOU PROVIDE IT BASED ON THE UNDERSTANDING THAT THERE IS A GOOD CHANCE THAT YOU CAN IMPROVE SOMETHING BY - BY PROVIDING THE SERVICE.

AND, SO, FROM THAT STANDPOINT, I SUPPOSE YOU COULD SAY WE WERE HOPING TO IMPROVE THE OUTCOME. NOW HOW YOU WOULD, I GUESS YOU WOULD HAVE TO ASK SOME QUESTIONS IN ORDER TO KNOW WHETHER YOU IMPROVE THE OUTCOME.

I DON'T KNOW IF THAT ANSWERS YOUR QUESTION, BUT

HOPE IT ANSWERS YOUR QUESTION.

[SCHUH 280]

Q. OKAY. WEREN'T YOU TRYING TO SEE IF YOU COULD MAKE A DIFFERENCE, IF YOU COULD ACTUALLY MAKE IT -

A. WE WERE HOPING THAT PROVIDING SERVICES WOULD IMPROVE THE OUTCOME FOR PATIENTS. THAT IS, THE MOTHERS AS PATIENTS AND CERTAINLY FOR THE BABIES WHO WERE TO BE BORN, YES.

Q. AND IN ADDITION TO THE TRANSPORTATION PROVISION, YOU WOULD HAVE HAD A NUTRITIONIST ACTUALLY BE AVAILABLE TO WORK WITH WOMEN WOULD HAD SUBSTANCE ABUSE PROBLEMS DURING THEIR PREGNANCY?

A. YES.

Q. AND YOU HAD THE SUBSTANCE ABUSE, THE PROPOSAL WOULD HAVE HAD SUBSTANCE ABUSE COUNSELING AVAILABLE AT THE SAME PLACE AT THE SAME TIME THAT THE PRENATAL CARE WAS PROVIDED?

A. YES.

Q. WHY WOULD THAT HAVE BEEN IMPORTANT?

A. WELL, AGAIN, I THINK ANYONE WHO HAS EVER HAD FOUR APPOINTMENTS KNOWS IT'S EASIER TO KEEP ONE APPOINTMENT THAN IT IS TO KEEP FOUR, ESPECIALLY IF THEY'RE IN DIFFERENT PLACES AND DIFFERENT TIMES.

Q. THAT WAS SOMETHING THAT WAS DESIGNED TO IMPROVE MATERNAL AND FETAL HEALTH?
A. YES, IT WAS.
MS. SHOWERS: YOUR HONOR, I'M SORRY TO INTERRUPT. THIS WAS A PROPOSAL THAT WAS NEVER FUNDED. I'M NOT SURE WHAT THE RELEVANCE IS. WE SEEM TO BE GOING THROUGH THE PROPOSAL

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[SCHUH 288]

I DEALT WITH CHILDREN WHO WERE AT VERY HIGH-RISK FOR MANY YEARS BEFORE THE - THE DEFINITION OCCURRED. BUT MY ACTUAL - MY INCREASED RESPONSIBILITY IN THAT AREA WITHIN THE UNIVERSITY BEGAN ABOUT 1979 AND 1980.
Q. AND, DR. SCHUH, WERE YOU INVOLVED IN ANY OF THE EARLY MEETINGS ABOUT THE INTERAGENCY POLICY IN 1989?
A. YES, I WAS.
Q. COULD YOU TELL THE JURY ABOUT YOUR INVOLVEMENT, PLEASE?
A. I THINK THAT I WAS ORIGINALLY CONTACTED ABOUT THE CONCERN FOR BABIES BEING BORN BECAUSE ONE OF THE - ONE OF THE THINGS THAT EVERYONE RECOGNIZED AT THAT TIME WAS PUTTING CHILDREN AT RISK WAS THAT THE CHILD WOULD BE IN THE CARE OF SOMEONE WHO WAS UNDER THE INFLUENCE OF ANY SUBSTANCE WHICH CHANGED MOOD, WHICH WOULD BE ALCOHOL, STREET DRUGS AND SOMETIMES ALSO

MEDICALLY PRESCRIBED DRUGS, PARTICULARLY FOR PATIENTS WHO HAD OTHER MENTAL HEALTH PROBLEMS WHICH MIGHT PUT THE CHILD AT RISK.

AND SINCE I WORKED WITH ABUSED AND NEGLECTED CHILDREN THEY FELT THAT I MIGHT HAVE SOME AWARENESS OF WHAT WENT ON. I THINK AT THE TIME THEY CONTACTED ME THAT THEY HAD NOT RECOGNIZED THAT I HAD DONE ANY WORK WITH ADDICTED PATIENTS IN THE PAST, AND THAT WAS KIND OF A SURPRISE TO THEM. BUT I THINK IT WAS PRIMARILY BECAUSE THEY FELT THAT I WOULD BE FAMILIAR WITH THE NEEDS OF CHILDREN WHERE THEY MIGHT BE AT RISK FOR NEGLECT OR ABUSE.

* * *

[SCHUH 289]

Q. WHAT WAS THE GOAL OF THE INTERAGENCY POLICY AS YOU UNDERSTOOD IT?

A. MY UNDERSTANDING OF THE GOAL OF THE INTERAGENCY POLICY WAS THAT WE WOULD TRY TO INTERVENE DURING THE PREGNANCY AND PRIOR TO THE BIRTH OF THE CHILD IN ORDER TO STOP, IF POSSIBLE, OR LIMIT THE EXPOSURE OF - PRENATALLY TO COCAINE SPECIFICALLY. I THINK WE HAD CONCERNS ABOUT OTHER DRUGS ALSO. IN ORDER THAT WE COULD ASSIST THE MOTHERS, OR

ABOUT-TO-BE MOTHERS, TOO, I WANT TO SAY, GET THEIR LIFE IN ORDER. BUT THAT'S KIND OF WHAT IT IS, TO GET THEMSELVES TOGETHER SO THAT THEY WOULD BE - PUT THE CHILD AT LESS RISK DURING THE PREGNANCY AND BE CAPABLE PARENTS WHEN THE CHILD WAS BORN.

Q. DO YOU RECALL WHY COCAINE WAS TARGETED SPECIFICALLY?

A. COCAINE WAS TARGETED SPECIFICALLY BECAUSE WITH MANY OTHER DRUGS OF ABUSE, AND I'M GOING TO EXCLUDE ALCOHOL AT THIS POINT BECAUSE IT WAS LEGAL AT THAT TIME, BUT I - I GUESS IT'S STILL LEGAL, BUT WITH MANY OTHER DRUGS OF ABUSE -

MS. DUNN: OBJECTION, YOUR HONOR. I'M NOT SURE THIS WITNESS HAS BEEN ESTABLISHED AS BEING COMPETENT IN THIS PARTICULAR AREA.

THE COURT: WHICH AREA?

MS. DUNN: SHE IS TALKING ABOUT THE EFFECTS OF COCAINE, I BELIEVE, PRENATALLY.

THE COURT: THE QUESTION WAS, WHY WAS THE FOCUS OF

[SCHUH 290]

THE POLICY ON COCAINE.

MS. DUNN: I REALIZE SHE WAS GOING INTO AN EXPLANATION.

THE COURT: I THINK SHE IS PERMITTED TO SAY THAT. I

OVERRULE THE OBJECTION.
A. THAT WE WERE SEEING AN INCREASE IN PROBLEMS IN OUR PREGNANCIES WITHIN THE UNIVERSITY THAT RELATED TO THINGS THAT HAD BEEN DESCRIBED AS ATTRIBUTED TO COCAINE IN THE PAST. AND MY UNDERSTANDING FROM MY PRIOR WORK WAS, AND I THINK MOST OF THE CURRENT LITERATURE AT THAT TIME DID NOT INDICATE MARKEDLY INCREASED RISK TO THE FETUS FROM OTHER DRUGS OF ABUSE.
Q. AT THE MEETINGS, WAS THERE ANY DISCUSSION OF THE CHILD ABUSE REPORTING STATUTE?
A. YES, THERE WAS.
Q. AND WHAT WAS YOUR UNDERSTANDING OF THAT?
A. MY UNDERSTANDING WAS THAT THE AREA OF WHAT THEY CALL FETAL ABUSE, THAT IS ABUSE TO AN UNBORN CHILD WAS NOT WELL ESTABLISHED AT THAT TIME.
Q. DID YOU UNDERSTAND FROM THE REPRESENTATIVES OF THE SOLICITOR'S OFFICE AND THE POLICE DEPARTMENT THAT YOU, AS A PEDIATRICIAN, WERE TO REPORT THAT AS SUSPECTED CHILD ABUSE AND NEGLECT?
A. YES. WE WERE GIVEN TO UNDERSTAND THAT THE SOLICITOR'S OFFICE - THE POSITION OF THE SOLICITOR'S OFFICE WAS THAT IT WOULD BE REPORTABLE.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF DAVID SCHWACKE

[SCHWACKE 137]

(TESTIMONY EXCERPT OF DAVID SCHWACKE 12-0-96).
MS. PALTROW: YOUR HONOR, I WOULD CALL DAVID SCHWACKE TO THE STAND, PLEASE.

- - -

DAVID SCHWACKE, PLF. WITNESS, SWORN.
DIRECT EXAMINATION
BY MS. PALTROW:
Q. GOOD MORNING.
A. AFTERNOON.
Q. AFTERNOON. WOULD YOU STATE YOUR NAME, PLEASE, FOR THE JURY.
A. DAVID PRICE SCHWACKE.
Q. AND TELL US WHAT YOUR POSITION IS.
A. I'M SOLICITOR FOR THE NINTH JUDICIAL CIRCUIT, WHICH IS CHARLESTON AND BERKELEY COUNTIES.
Q. AND WHEN DID YOU START IN THAT POSITION?
A AS SOLICITOR I WOULD HAVE BEGUN ON MARCH THE 18TH OF 1992. 1 WAS FILLING A THEN UNEXPIRED TERM FOR SOLICITOR

CONDON AND THEN WAS ELECTED FOR A FULL YEAR TERM IN NOVEMBER OF 1982. REELECTED JUST THIS PAST MONTH.
Q. AND PRIOR TO TAKING THE POSITION OF SOLICITOR, DID YOU WORK IN THE SOLICITOR'S OFFICE?
A. I WORKED IN TWO DIFFERENT OFFICES. MY INITIAL EMPLOYMENT WAS IN THE NINTH CIRCUIT AS ASSISTANT SOLICITOR IN

[SCHWACKE 138]

CHARLESTON. AND AUGUST OF 1983 THROUGH AUGUST OF 1984 1 LEFT CHARLESTON TO GO WORK IN THE SECOND JUDICIAL CIRCUIT, WHICH WAS AIKEN, BAMBERG AND BARNWELL COUNTIES. AND WAS ASSISTANT SOLICITOR FOR BOB HEART AUGUST OF '84 TO '87. AND RETURNED TO THE SOLICITOR'S OFFICE HERE IN CHARLESTON IN 1987.
Q. AND WOULD IT BE CORRECT TO SAY THAT YOU WERE NOT INVOLVED IN THE INITIAL FORMULATION OF THE INTERAGENCY POLICY?
A. THAT WOULD BE CORRECT.
Q. WOULD IT ALSO BE CORRECT TO SAY THAT WHEN YOU BECAME A SOLICITOR, THAT YOU CONTINUED TO IMPLEMENT THE INTERAGENCY POLICY?
A. THE POLICY CONTINUED WHEN I BECAME SOLICITOR.
Q. DID YOU MAKE ANY CHANGES TO THAT POLICY WHEN YOU CAME INTO YOUR NEW POSITION?

A. THERE WERE NO WRITTEN CHANGES MADE TO THE POLICY. THERE WERE SOME DECISIONS AS TO HOW TO PROCEED ON CERTAIN TYPES OF CASES, SO THAT THERE WAS A BIT OF A MODIFICATION.

Q. ISN'T IT CORRECT THAT YOU MODIFIED WHAT HAS BECOME KNOWN AS THE SOLICITOR'S LETTER?

A. ALL LETTERS WERE CHANGED TO REFLECT MY NAME. I DON'T BELIEVE THAT THERE WAS ANY CHANGE IN THE ACTUAL WORDING OF THE LETTER ITSELF, SIMPLY IN THE, I GUESS THE SIGNATURE LINE AND ANY OTHER REFERENCES AS TO THE STATIONERY ITSELF.

Q. SO IN YOUR POSITION AS SOLICITOR, YOU CONTINUED TO AUTHORIZE STAFF AT MUSC TO HAND OUT, ON YOUR BEHALF, A

[SCHWACKE 139]

SOLICITOR'S LETTER CONCERNING THE INTERAGENCY POLICY; IS THAT CORRECT?

A. ABSOLUTELY. ABSOLUTELY.

Q. AND YOU REFERRED TO CHANGES IN CERTAIN TYPES OF CHANGES IN THE POLICY?

A. THE ONLY MAJOR CHANGE DEALT WITH A DECISION DEALING WITH THE DISTRIBUTION OF CONTROLLED SUBSTANCES TO A PERSON UNDER THE AGE OF EIGHTEEN. WE INITIATED A BIT OF A RETREAT BACK TO SIMPLY THE POSSESSION CHARGES RATHER THAN THE DISTRIBUTION

CHARGES.
Q. AND WHY DID YOU MAKE THAT CHANGE?
A. THAT HAD MORE TO DEAL WITH THE UNCERTAIN STATUS OF HOW OUR COURTS WERE GOING TO RULE INITIALLY ON THIS ISSUE ABOUT WHETHER OR NOT A FETUS COULD CONSTITUTE A PERSON FOR THE PURPOSES OF DISTRIBUTION LAWS.
Q. AND IT WAS YOUR POSITION UNDER THE CRIME OF POSSESSION THAT ONE COULD MAKE A CHART SOME- CHARGE SOMEONE WITH A CRIME OF POSSESSION BASED ON A POSITIVE DRUG TEST?
A. YES.
Q. AND ISN'T IT TRUE THAT YOU HAD NO POLICY IN PLACE CONCERNING ANY OTHER PATIENTS AT MUSC WHO TESTED POSITIVE FOR DRUGS TO BE PROSECUTED FOR POSSESSION OTHER THAN THOSE WHO FELL WITHIN THE INTERAGENCY POLICY?
A. A POLICY, NO. BUT IF ANYBODY HAD A - PERSON HAD BEEN CHARGED WITH THAT OFFENSE, FROM ANYWHERE, AND IT WAS SIMPLY

[SCHWACKE 140]

BASED UPON THEIR BEING TESTED POSITIVE, WE WOULD HAVE PROSECUTED THEM.
Q. BUT YOU HAD NO FORMAL ARRANGEMENT WITH ANYBODY, FOR EXAMPLE AT MUSC, TO REPORT FATHERS WHO TESTED POSITIVE FOR AN ILLEGAL SUBSTANCE, DID YOU?

A. THERE WAS - THE ONLY REPORTING REQUIREMENT HERE DEALS WITH THE CHILD ABUSE AND NEGLECT REPORTING REQUIREMENT, THAT WOULD BE THE ONLY ONE IN PLACE.

Q. BUT IS IT CORRECT THAT YOU HAD NO POLICY WITH THE MEDICAL UNIVERSITY, SO THAT IF SOMEBODY IDENTIFIED A FATHER WHO TESTED POSITIVE FOR ILLEGAL SUBSTANCES, THEY WERE TO REPORT THAT TO YOU?

A. THERE WAS NO POLICY.

Q. AND SIMILARLY YOU HAD NO POLICY CONCERNING MEN IN GENERAL WHO TESTED POSITIVE AT THE HOSPITAL FOR THOSE MEN TO BE REPORTED TO THE SOLICITOR'S OFFICE, WHETHER OR NOT THEY HAD CHILDREN AT HOME; ISN'T THAT CORRECT?

A. THE ONLY POLICY IN PLACE IS THIS INTERAGENCY POLICY. NOW, AGAIN, I GET MY CASES BECAUSE OF CRIMINAL CONDUCT BEING REPORTED TO ME. IF SOMEONE HAD CHOSEN TO REPORT THAT TO ME, WE WOULD HAVE PROSECUTED. IF SOMEONE HAD TAKEN OUT AN ARREST WARRANT SIGNED BY A MAGISTRATE, WE WOULD HAVE PROSECUTED.

Q. BUT ISN'T IT CORRECT THAT'S THE ONLY WRITTEN AND FORMAL ARRANGEMENT THAT YOU HAD?

A. I HAVE SO TESTED, YES.

[SCHWACKE 141]

Q. AND ISN'T IT TRUE THAT YOU DID NOT HAVE ANY KIND OF

INTERAGENCY POLICY, MEANING A WRITTEN OR FORMAL POLICY CONCERNING POSITIVE DRUG TESTS ON PREGNANT WOMEN AT ANY OTHER HOSPITAL WITHIN THE JURISDICTION OF THE SOLICITOR'S OFFICE?

A. THERE WAS NO POLICY. THERE WERE ATTEMPTS TO MEET WITH OTHER HOSPITALS AND ESTABLISH A SIMILAR TYPE OF POLICY AND PROGRAM.

Q. BUT THOSE WERE NOT SUCCESSFUL, WERE THEY?

A. WELL, THE ONLY ONE THAT HAPPENED DURING MY TERM AS SOLICITOR WAS AT ROPER. AND WE MET WITH THEM AT THAT - IRENE DIXON AUDITORIUM AT THE END CLOSEST TO THE COUNTY MEMORIAL HOSPITAL WITH A GROUP OF PHYSICIANS THERE AND EXPLAINED TO THEM AGAIN THE REPORTING REQUIREMENT AND THE LAW AND TRIED TO SET UP A POLICY. THAT BEGAN AN INTERNAL DEBATE AMONG THEM AT ROPER. NO POLICY EVER CAME FROM THAT, AS A RESULT OF THOSE MEETINGS. BUT WE CERTAINLY DID INFORM THEM OF THE REQUIREMENTS.

Q. AND YOU HAVE NEVER BROUGHT A PROSECUTION AGAINST ANY OF THOSE PHYSICIANS AT ROPER, FOR EXAMPLE, FOR FAILING TO REPORT UNDER THE CHILD ABUSE REPORTING LAWS, HAVE YOU?

A. THAT'S A SELF-POLICING STATUTE COMPLETELY, BECAUSE YOU

HAVE TO KNOW THAT THE DOCTOR KNEW SOMETHING AND DIDN'T REPORT IT. SO, NO TYPE OF PROSECUTION LIKE THAT HAS TAKEN PLACE,
YOU'RE RIGHT. BUT IF WE KNEW OF IT, CERTAINLY WE WOULD HAVE ACTED.

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[SCHWACKE 157]

A. YES, SIR.
Q. HAVE HOW MANY CHILDREN?
A. TWO CHILDREN.
Q. NOW, WHEN YOU TOOK OVER THIS POLICY AT THE SOLICITOR'S OFFICE, THIS POLICY WAS ALREADY IN PLACE; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. AND EXPLAIN TO THE JURY WHAT THE GOAL OF THIS AMNESTY PROGRAM WAS?
A. THE WHOLE POLICY WAS DESIGNED AND CONTINUED ON AS A CARROT-AND-STICK APPROACH TO TRY TO MAKE CERTAIN THAT INDIVIDUALS, IN THIS CASE PREGNANT FEMALES TESTING POSITIVE FOR COCAINE, HAD THE OPPORTUNITY TO GO INTO A TREATMENT PROGRAM.
THE WHOLE PROCESS WAS DESIGNED ABOUT MAKING SURE THEY UNDERSTOOD THE RAMIFICATIONS OF IT FIRST IN TERMS OF THE HEALTH CONCERNS THAT IT PLACED NOT ONLY TO THEM AND TO THEIR CHILDREN, BUT ALSO THE FACT THAT IT WAS JUST PLAIN FLAT OUT

ILLEGAL AND CRIMINAL CONDUCT. AND THERE WERE ALSO RAMIFICATIONS FOR THAT AS WELL. EACH OF THESE INDIVIDUALS WHO WERE ARRESTED WERE PLACED INTO A DIVERSION PROGRAM, PRETRIAL INTERVENTION WITH THE HOPE OF GETTING THEM TREATMENT. AND ANYBODY WHO COMPLETED THAT PROGRAM THAT GOT THAT TREATMENT WAS NOT PROSECUTED, THE CHARGES WERE DISMISSED AND THEIR RECORD WAS EXPUNGED.

Q. YOU MENTIONED PRETRIAL INTERVENTION PROGRAM. EXPLAIN TO

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[SCHWACKE 159]

Q. AND IF THEY DID WHAT THE POLICY REQUIRED, DID YOUR OFFICE PROSECUTE THEM IF THEY WENT TO SUBSTANCE ABUSE LIKE THEY WERE SUPPOSED TO?

A. IF THEY DID THE PROGRAM REQUIREMENTS, ATTENDING COUNSELING, ATTENDING THE PRISON TOUR, WHATEVER WAS REQUIRED OF THEM, THOSE CHARGES WERE DISMISSED AND THEY WERE ABLE TO EXPUNGE THEIR RECORD.

WE HAD 253 THAT WERE TESTED POSITIVE, 30 WERE ARRESTED AND TWO WERE PROSECUTED. DID THOSE TWO ACTUALLY EVER GET SENTENCED TO JAIL?

MS. PALTROW: OBJECTION, LEADING.

THE COURT: I THINK THE QUESTION, THE LAST THREE OR FOUR WORDS MAY NOT HAVE BEEN LEADING, BUT THE QUESTION IN SUBSTANCE WAS. SO I SUSTAIN THE OBJECTION AND ASK YOU TO REPHRASE IT.

MR. HOOD: YES, SIR. I DIDN'T THINK IT WAS IN DISPUTE.

THE COURT: THAT DOESN'T MAKE ANY DIFFERENCE. A LEADING QUESTION IS A LEADING QUESTION, AND IT'S OBJECTIONABLE.

MR. HOOD: YES, SIR.

Q. (BY MR. HOOD, CONTINUING) THE TWO WOMEN THAT CAME UNDER THE POLICY, WERE THEY EVER ACTUALLY PUT IN PRISON AND SENTENCED?

A. THEY WERE NOT SENTENCED TO ACTIVE JAIL TIME, THEY WERE

[SCHWACKE 160]

PLACED ON PROBATION. CONTINUED DRUG TREATMENT WAS A SPECIAL CONDITION OF THEIR PROBATION.

Q AND THE THIRTY WOMEN THAT WERE ARRESTED, DID ANY OF THEM EVER GET PLACED IN JAIL OTHER THAN THE INITIAL ARREST, WHERE THEY SENTENCED AND CONVICTED AND PUT IN JAIL FOR VIOLATING THE LAW?

A. NO, THEY WERE NOT. NOT - NOT RELATED TO THESE OFFENSES.

Q. MR. SCHWACKE, I WANT TO MAKE SURE THAT THE JURY UNDERSTANDS WHAT THE LAW WE'RE TALKING ABOUT.

MR. HOOD: I HAVE DONE A BLOWUP, YOUR HONOR, THAT I WOULD LIKE TO AT THIS TIME ASK HIM ABOUT. IT'S - I'M SORRY GIVE YOU AN IDEA. PERSONS TO REPORT, IMMUNITY FROM LIABILITY, ABROGATION OF PRIVILEGED COMMUNICATION AND PENALTIES. THIS IS THE REPORTING STATUTES.

MS. PALTROW: I OBJECT. I THINK THAT'S A PROPER INSTRUCTION AT THE END OF THIS TRIAL. THIS IS NOT AN APPROPRIATE - HE WOULD BE SPEAKING ABOUT WHAT THE LAW IS, WHICH IS THE PURVIEW OF THIS COURT, NOT THIS WITNESS.

THE COURT: WHAT DO YOU ANTICIPATE ASKING HIM ABOUT IT?

MR. HOOD: THIS IS THE LAW OF SOUTH CAROLINA AND UNDER THE REQUIREMENTS.

THE COURT: HE IS A LAWYER AND HE KNOWS THE LAW?

MR. HOOD. YES, SIR.

THE COURT: YOU HAVE ASKED SOME WITNESSES WHO MAY

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[SCHWACKE 163]

Q. (BY MR. HOOD, CONTINUING) YOU MENTIONED TO COUNSEL THAT

YOU CAN ONLY DO SOMETHING AS OUR CHIEF PROSECUTOR IF A CRIME IS REPORTED TO YOU. IF YOU GO TO THE OTHER HOSPITALS IN THE CHARLESTON COMMUNITY AND DISCUSS THIS POLICY AND AMNESTY PROGRAM AND THE NEED TO REPORT TO CHILD ABUSE -

MS. PALTROW: OBJECTION, LEADING.

THE COURT: I THINK IT'S LEADING. I SUSTAIN THE OBJECTION.

Q (BY MR. HOOD, CONTINUING) DID YOU GO TO THE OTHER H08PITALS IN THIS COMMUNITY IN CONNECTION WITH THIS INTERAGENCY POLICY?

A. SPECIFICALLY ROPER HOSPITAL DURING THE TIME I WAS SOLICITOR.

Q. OKAY. AND WHAT WAS THE PURPOSE OF YOUR GOING TO ROPER?

A. THE PURPOSE WAS TO ADDRESS WITH THE DOCTORS THERE THE NEED TO REPORT CASES OF SUSPECTED CHILD ABUSE AND NEGLECT, TO MAKE THEM AWARE OF THE POLICY AS IT EXISTED AT THE MEDICAL UNIVERSITY. THE PHILOSOPHIES BEHIND THE POLICY. AND TO ENGAGE THEM HOPEFULLY TO BEGIN REPORTING CASES THAT SHOULD HAPPEN THERE OF A SIMILAR TYPE OF CONDUCT.

Q. AND AS SOLICITOR, DID YOU BECOME AWARE OF REPORTING TO YOUR OFFICE OR TO THE CHARLESTON COUNTY SUBSTANCE ABUSE

COMMISSION THE USE OF COCAINE BY PREGNANT WOMEN FROM PRIVATE PHYSICIANS AND/OR OTHER HOSPITALS?
A. WE HAD THE ONE INSTANCE SPECIFICALLY THAT WAS REPORTED TO

[SCHWACKE 164]

US BY EAST COPPER, WHATEVER THEY WERE CALLED THERE, AMI OR WHATEVER THE NAME OF THE HOSPITAL WAS. AND I BELIEVE THAT THERE WAS - IT'S MY RECOLLECTION THERE WERE PRIVATE PHYSICIANS THAT ALSO MADE REPORTS THAT WERE NOT IN A HOSPITAL SETTING.
Q. OKAY. WAS THIS POLICY INTENTIONALLY IMPLEMENTED AND USED IN A WAY TO DISCRIMINATE?
A. AGAINST WHO?
Q ANYONE.
A. I MEAN, THE BOTTOM LINE OF THE POLICY IS, IT EXISTED TO HELP TWO PEOPLE, MOTHER, CHILD. I MEAN, WHOSE BEING DISCRIMINATED AGAINST? IF YOU DO NOTHING TO HELP THE CHILD YOU'RE DISCRIMINATING AGAINST THE CHILD. AND IF YOU DISCRIMINATE AGAINST THE MOTHER, BY DOING A PROGRAM DESIGNED TO HELP THEM HELP THEMSELVES, AND IN THE PROCESS HELP THE CHILD, THE POLICY WAS NOT DESIGNED TO DISCRIMINATE.
Q. WHAT ABOUT RACE?
A. NOT DESIGNED TO DISCRIMINATE AGAINST RACE. AGAIN, EITHER

YOU'RE IGNORING THE FACT THAT YOU'RE HELPING BOTH THE BLACK MOTHER AND BLACK CHILD OR WHITE MOTHER AND WHITE CHILD, IT MADE NO DIFFERENCE TO US WHO THAT PERSON WAS.

Q. THESE WOMEN REPORTED FROM THE OTHER HOSPITALS, DO YOU KNOW IF THE MOTHERS WERE WHITE?

A. SPECIFICALLY I DON'T KNOW.

Q. NOW, WITH REGARD TO YOUR OFFICE - OFFICE OF SOLICITOR,

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